

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DALE STEVE BOENING, a/k/a DALE STEVEN  
BOENING,

Defendant-Appellant.

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UNPUBLISHED

July 19, 1996

No. 180889

LC No. 94009991 FC

Before: Marilyn Kelly, P.J., and Neff and J. Stempien,\* JJ.

PER CURIAM.

Defendant was convicted of breaking and entering an unoccupied building with intent to commit larceny, MCL 750.110; MSA 28.305, breaking and entering an occupied dwelling with intent to commit larceny, MCL 750.110; MSA 28.305, assault with intent to rob while armed, MCL 750.89; MSA 28.284, and assault with intent to commit murder, MCL 750.83; MSA 28.278. For those respective convictions, he was sentenced to concurrent terms of six to ten years' imprisonment, ten to fifteen years' imprisonment, twenty to forty years' imprisonment and twenty-five to fifty years' imprisonment. Defendant appeals as of right. We affirm.

Having reviewed the totality of the circumstances surrounding the giving of defendant's statement to the police, we conclude that those circumstances establish that the statement was freely and voluntarily made. *People v Haywood*, 209 Mich App 217, 225-226; 530 NW2d 497 (1995).

The trial court did not abuse its discretion when it denied defendant's motion for the appointment of an independent medical expert. Defendant failed to show that expert testimony would likely have benefited the defense where the victim's treating physicians constituted independent medical witnesses and where those physicians testified as to the cause of the victim's injuries, based on their observations and experience. *People v Jacobsen*, 448 Mich 639, 641; 532 NW2d 838 (1995).

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant failed to object to the admission of any of the testimonial evidence concerning the discovery of a spent .22 caliber shell in the residence or the bullet hole in the master bedroom wall. Accordingly, defendant is precluded from raising his evidentiary challenges for the first time on appeal. *People v Considine*, 196 Mich App 160, 162; 492 NW2d 465 (1992).

Defendant did object below, however, to the admission of photographs of the bullet hole. If error occurred in the admission of these photographs, it was harmless. MCR 2.613(A); *People v Robinson*, 386 Mich 551, 562; 194 NW2d 709 (1972).

Defendant failed to raise his double jeopardy argument before or during trial and, therefore, has failed to preserve the claim for appellate review. *People v Jones*, 75 Mich App 261, 270-271; 254 NW2d 863 (1977). We decline to waive our preservation requirement. The claimed constitutional error is not outcome determinative, *People v Grant*, 445 Mich 535, 547; 520 NW2d 123 (1994), because defendant's convictions and sentences for assault with intent to rob while armed and assault with intent to commit murder do not constitute multiple punishment for the same offense subject to either the federal or state double jeopardy prohibition. *United States v Dixon*, 509 US 688; 113 S Ct 2849; 125 L Ed 2d 556, 568 (1993); *People v Ayers*, 213 Mich App 708; 540 NW2d 791 (1995); *People v DeLeon*, 177 Mich App 306; 441 NW2d 85 (1989); *People v Bryan*, 92 Mich App 208; 284 NW2d 765 (1979).

Defendant also failed to request that the trial court instruct the jury with the offense of attempted armed robbery. Accordingly, we decline to address defendant's claim that the court erred in not giving the instruction. MCL 768.29; MSA 28.1052; *People v Hendricks*, 446 Mich 435, 441; 521 NW2d 546 (1994).

Defendant failed to object to the instruction given by the trial court that informed the jury of the elements of the offense of assault with intent to commit murder. Accordingly, defendant has failed to preserve his challenge to the instruction given and so appellate review is precluded absent manifest injustice. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). We find no manifest injustice. Taken as a whole, the jury instructions adequately informed the jury of the specific intent needed to support a conviction for the offense. *People v Lipps*, 167 Mich App 99, 106; 421 NW2d 586 (1988); *People v Burnett*, 166 Mich App 741, 755-757; 421 NW2d 278 (1988).

Next, there is sufficient evidence in the record to support the trial court's scoring of Offense Variable (OV) 6. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993). The circumstances surrounding the commission of the assaults establish that defendant's actions placed two persons in danger of injury or loss of life.

Likewise, we conclude that the trial court correctly scored OV 13. The victim's family physician testified at trial that he had treated the victim for stress suffered as a result of the attack. This testimony supports the conclusion that the victim suffered serious psychological injury necessitating professional treatment. *Hernandez, supra*.

Finally, after a thorough review of the record, we conclude that defendant has not sustained his burden of proving that counsel made a serious error that affected the result of the trial. *People v LaVearn*, 448 Mich 207, 213; 528 NW2d 721 (1995). Accordingly, we reject defendant's ineffective assistance of counsel claim.

Affirmed.

/s/ Marilyn Kelly

/s/ Janet T. Neff

/s/ Jeanne Stempien