STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY MACK WOODY,

Defendant-Appellant.

UNPUBLISHED
July 19, 1996

No. 174451
LC No. 93-003056-FC

Before: White, P.J., and Sawyer and R.M. Pajtas,* JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of assault with intent to murder, MCL 750.83; MSA 28.278, armed robbery, MCL 750.529; MSA 28.797, breaking and entering an occupied dwelling with intent to commit larceny, MCL 750.110; MSA 28.305, and three counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to life imprisonment for the assault with intent to murder conviction, twenty-five to fifty years for the armed robbery conviction, six to fifteen years for the breaking and entering conviction and two years for each of the felony-firearm convictions. Defendant now appeals and we affirm.

Defendant first argues that the prosecutor violated his due process rights by eliciting testimony on direct examination that the owner of the marijuana allegedly taken during the armed robbery had agreed to testify "truthfully" in exchange for leniency. Defendant does concede that counsel failed to object to these alleged improper remarks. Therefore, appellate review of these allegedly improper remarks is precluded absent manifest injustice. *People v Stanaway*, 446 Mich 643, 687; 446 NW2d 643 (1994). Given the nature of the witness' testimony and the overwhelming evidence against defendant, we conclude that failure to review this issue further will not result in manifest injustice.

Defendant next argues that there was insufficient evidence introduced at trial to show that he had an intent to kill the victim. We disagree. The intent to kill may be proven by inference from any fact in evidence. *People v Taylor*, 422 Mich 554, 568; 375 NW2d 1 (1985). The testimony showed that

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

defendant and an accomplice were involved in an armed robbery, and that when they noticed that the police arrived, they ran out the back door towards Officer Madsen in an attempt to escape. There was evidence that defendant first shot from a distance of only ten feet, and was aiming directly at the officer and that if the officer had not moved, he would have been hit. There was also testimony that after the first shot, defendant positioned himself to get a better aim at the officer and that his aim followed the officer as he moved and that defendant then fired a second shot from a distance of only twelve feet. When the above-mentioned evidence and the reasonable inferences arising therefrom are looked at in a light most favorable to the prosecution, a rational trier of fact could have been convinced beyond a reasonable doubt that defendant in this case intended to kill the officer when he was trying to make his escape from the scene of the crime. *People v Wolfe*, 440 Mich 508; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Defendant's final argument is that the trial court violated his due process rights by requiring him to appear in shackles in the presence of the jury. In this case, defendant was brought into the courtroom, prior to the jury's returning from its deliberations, in leg irons. Prior to this, defendant was at no time shackled in the presence of the jury. When the jury did return from deliberations, the following exchange took place:

> *The Defendant:* Your Honor, they put leg irons on me.
>
> *The Court:* Mr. Woody, please have a seat back there. Mrs. Plushnik. Have a seat Mr. Woody. Mrs. Plushnik.
>
> *The Clerk:* Ladies and gentlemen of the jury, if you have arrived at a verdict would your foreman please rise and state your verdict as to Count I? As to Count I.
>
> *Jury Foreperson:* Guilty.
>
> *The Clerk:* As to—
>
> *The Defendant:* You[r] Honor, they put leg irons—
>
> *The Court:* Mr. Woody, please have a seat.
>
> *The Defendant:* They put leg irons on me before I'm even found guilty of anything.
>
> *The Court:* Mr. Woody, that was only brought to the attention of the jury at your direction, sir. It never would have been known had you—
>
> *The Defendant:* I walked in her with leg chains on.
>
> *The Court:* They were not present, Mr. Woody.

Defendant further argues that he was prejudiced in that because a juror could have changed his vote during the polling of the jury, the jury may have reached its verdict on the presence of shackles, rather than on the evidence presented at trial. A juror, upon polling, may exercise disagreement with the verdict which would require further deliberations. *People v Booker (After Remand)*, 208 Mich App 163; 527 NW2d 42 (1994). However, in this case, the jury had already reached a verdict and voted to convict defendant prior to seeing defendant in leg irons; there is simply no evidence that shows that any of the jurors were going to change their vote or express disagreement with the verdict because of what defendant had brought to their attention. We, therefore, conclude that defendant was not prejudiced as a result of having been shackled. *People v Robinson*, 172 Mich App 650, 654; 432 NW2d 390 (1988). Furthermore, we note that the only reason the jury was aware of the shackling was because of defendant's own actions. If defendant was concerned that the shackling might have prejudiced the jury at that late stage of the proceedings, he should not have drawn their attention to it.

Affirmed.

/s/ Helene N. White
/s/ David H. Sawyer
/s/ Richard M. Pajtas