

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRE WATTS,

Defendant-Appellant.

UNPUBLISHED

December 12, 1997

No. 195569

Recorder's Court

LC No. 94-009990

Before: Bandstra, P.J., and Cavanagh and Markman, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree murder, MCL 750.317; MSA 28.549, assault with intent to murder (two counts), MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to concurrent terms of twenty-five to fifty years' imprisonment for the murder and assault convictions, plus two years' consecutive imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred in denying his motion for self-representation. However, defendant made no unequivocal request to proceed without counsel. See *People v Adkins (After Remand)*, 452 Mich 702, 722; 551 NW2d 108 (1996). Defendant's request was merely one for hybrid representation, not an unequivocal request for self-representation. See *People v Dennany*, 445 Mich 412, 446-447 (Griffin, J.), 458 (Boyle, J.); 519 NW2d 128 (1994). The trial court fully accommodated defendant's request by permitting defendant to write out his questions so that his attorney could ask them. Accordingly, we find no error requiring reversal.

Next, defendant claims that he was deprived of his constitutional rights when he was not permitted to waive his right to a jury. We disagree. There is no constitutional right to waive a jury trial. *People v Kirby*, 440 Mich 485, 487; 487 NW2d 404 (1992). Moreover, defendant's failure to both put his request in writing and obtain the prosecutor's consent vitiates his claim. See MCL 763.3(1); MSA 28.856(1), *People v Jones*, 195 Mich App 65, 68-69; 489 NW2d 106 (1992).

Defendant also contends that prosecutorial misconduct denied him a fair trial. However, defendant failed to object to any of the alleged misconduct. Appellate review of improper prosecutorial

remarks is generally precluded absent objection by counsel because the trial court is otherwise deprived of an opportunity to cure the error. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994), cert den sub nom *Michigan v Caruso*, 513 US 1121 (1995). An exception exists if a curative instruction could not have eliminated the prejudicial effect or where failure to consider the issue would result in a miscarriage of justice. *Id.*

Here, our review of the record indicates that there was no misconduct. The prosecutor did not improperly engage in cross-examination of co-defendant Wissert, since MRE 607 permitted the prosecutor to attack his credibility. Defendant's other claims of misconduct have no merit, as the comments were either proper comments on the evidence, *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995), or on the credibility of the witnesses, *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996).

Defendant next claims that there was insufficient evidence to support his convictions of assault with intent to murder. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

The evidence presented at trial showed that defendant pointed the gun at the victims immediately before killing the decedent and that he fired several shots at the car in which the victims were driving. Intent may be inferred from all the facts and circumstances. *People v Lugo*, 214 Mich App 699, 709; 542 NW2d 921 (1995). The evidence, viewed in a light most favorable to the prosecution, permitted the inference that defendant had the intent to kill.

Next, defendant asserts that the trial court's instructions were deficient. Because defendant failed to object to the instructions given, this instructional issue is waived absent manifest injustice. See *People v Torres (On Remand)*, 222 Mich App 411, 423; 564 NW2d 149 (1997). The trial court was not obligated to repeat the instructions on defendant's defenses when the jury requested supplemental instructions on first- and second-degree murder. See *People v Mroue*, 111 Mich App 757, 768; 315 NW2d 192 (1981). Regarding the remaining alleged deficiencies, we have reviewed the court's instructions and find that because they fairly presented to the jury the issues to be tried and sufficiently protected defendant's rights, *People v Bell*, 209 Mich App 273, 276; 530 NW2d 167 (1995), manifest injustice is not present in this case.

Given our resolution of the above issues, defendant's claim of ineffective assistance of counsel stemming from the failure to object to the various alleged errors is without merit. In light of the discussion above, defendant has not established that counsel's performance was deficient. See *Torres, supra* at 425.

Affirmed.

/s/ Richard A. Bandstra
/s/ Mark J. Cavanagh
/s/ Stephen J. Markman