

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CORTEZ R. DAVIS,

Defendant-Appellee.

UNPUBLISHED

August 31, 2004

No. 246847

Wayne Circuit Court

LC No. 94-002089

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

PER CURIAM.

The prosecution appeals by delayed leave granted from an order granting defendant's motion for relief from judgment under MCR 6.508. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court gave the jury instruction that formed the basis for its grant of relief from judgment as part of its initial charge to the jury prior to the start of deliberations. After the jury left the courtroom to begin deliberations, the trial court asked counsel if there was "[a]ny problem with the charge," to which defense counsel replied, "Not for the defense, Your Honor." In *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002), this Court held that a defendant waived appellate review of a claim of error in jury instructions by "expressly approving" those instructions when defense counsel replied, "No, Your Honor," after the trial court asked if there were any objections to the jury instructions as read. It follows that defense counsel's substantively identical remark in the present case constituted a waiver by defendant of any claim of error with regard to the jury instruction at issue. Apparent error that is waived is extinguished. *People v Riley*, 465 Mich 442, 449; 636 NW2d 514 (2001). Thus, the trial court erred in granting defendant's motion for relief from judgment based on the claimed instructional error because, due to defendant's waiver which extinguished any error regarding this matter, there was no error to warrant relief.¹

¹ In light of our analysis, we need not reach the prosecution's claim that MCR 6.508(D)(2) precluded the trial court from granting the motion for relief from judgment.

Reversed.

/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly