

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEROME CRUTCHER,

Defendant-Appellant.

UNPUBLISHED

May 12, 2005

No. 250609

Wayne Circuit Court

LC No. 01-005018-01

Before: Gage, P.J., and Cavanagh and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions for armed robbery, MCL 750.529, and felony firearm, MCL 750.227(b). We affirm.

Defendant first argues that the trial court erred when it allowed the prosecutor to introduce evidence of flight. We disagree. Because defendant failed to object to the admission of this evidence, the issue is unpreserved and defendant must show plain error affecting his substantial rights. See *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000); *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Evidence of flight is admissible to support an inference of “consciousness of guilt.” *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). Here, defendant contends that the evidence was more prejudicial than probative. Assuming without deciding that it was more prejudicial than probative, the admission of the evidence was not outcome determinative in light of the overwhelming evidence of defendant’s guilt, including unambiguous eyewitness testimony and other corroborative evidence such as matching vehicles and matching guns. Accordingly, defendant has not shown plain error affecting his substantial rights. See *People v Jones*, 468 Mich 345, 356-360; 662 NW2d 376 (2003).

Next, defendant argues that the trial court erred in refusing to hear two motions he attempted to bring to the court’s attention during trial. We disagree. Although the record and defendant’s argument on appeal are somewhat unclear as to the nature of the motions, it appears that they both center around a request for a *Walker*¹ hearing. The first motion substantially

¹ *People v Walker*, 374 Mich 331; 132 NW2d 87 (1965).

constituted a request for reconsideration of the court's prior ruling in an earlier *Walker* hearing,² the denial of which we review for an abuse of discretion. *People v Soltis*, 104 Mich App 53, 55-56; 304 NW2d 811 (1981). This earlier hearing addressed the voluntariness of defendant's statement to police. The second "motion" was actually an objection at trial to admission of this statement.³ We note that special circumstances may justify halting a trial in progress to conduct a hearing on the admissibility of evidence. *Id.* However, defendant alleges no such circumstances here, arguing only that he was entitled to the hearing as a matter of procedural right. Because the issue had already been addressed numerous times, the trial court did not abuse its discretion in refusing to entertain the matter again in either circumstance identified by defendant.

Next, defendant argues that he received ineffective assistance of standby counsel and that the trial court erred in refusing to grant his motion for a new trial on that basis. Again, we disagree. Whether to grant a new trial is in the trial court's discretion. *People v Cress*, 468 Mich 678, 691; 664 NW2d 174 (2003). However, we review the underlying question of whether standby counsel's assistance was effective de novo. *People v Kevorkian*, 248 Mich App 373, 410-411; 639 NW2d 291 (2001).

Defendant chose to represent himself at trial and, indeed, insisted that his standby counsel was not his attorney. "[A] defendant has a constitutional entitlement to represent himself or to be represented by counsel – but not both." *People v Dennany*, 445 Mich 412, 442; 519 NW2d 128 (1994). Consequently, Const 1963, art 1, § 13 "permits the use of standby counsel as a matter of grace, but not as a matter of right." *Id.* at 443. "[A] defendant who chooses to represent himself does so at his own peril. With no constitutional right to an attorney, a defendant proceeding in propria persona has no basis to claim that the [standby] attorney must abide by constitutional standards." *Kevorkian, supra* at 424.

Here, standby counsel did nothing to interfere with defendant's right to control the case or to alter the jury's perception that defendant was representing himself. The trial court informed the jurors that defendant was representing himself, but did have standby counsel available. Defendant conducted voir dire and cross-examined witnesses entirely on his own. Defendant complains that standby counsel did not give a closing argument on his behalf. However, the lack of a closing argument is attributable not to standby counsel's ineffectiveness, but rather to defendant's own decision to absent himself from the courtroom on the last day of trial. Defendant did not ask standby counsel to take over the case. On the contrary, the record reflects that defendant specifically forbade standby counsel from acting on his behalf.

At all times during the pendency of trial, the standby attorney was not acting as counsel within the meaning of the Sixth Amendment⁴ or Const 1963, art 1, § 13 and, therefore, cannot be

² Held in conjunction with a *Wade* hearing. *United States v Wade*, 388 US 218; 87 S Ct 1926; 18 L Ed 2d 1149 (1967).

³ The record reveals that defendant had brought several other motions for further hearings on the statement throughout the pendency of the proceedings below.

⁴ US Const, Am VI.

held to the standards of effective assistance required of trial counsel. See *Kevorkian, supra* at 427. Because defendant chose to represent himself during trial, he may not now assign blame for his conviction to standby counsel. *Id.* at 426. Therefore, defendant's claim is without merit.

Affirmed.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Richard Allen Griffin