

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
July 21, 2015

v

CHARLES MICHAEL HOUCK,
Defendant-Appellant.

No. 321807
Ionia Circuit Court
LC No. 2013-015716-FH

Before: MARKEY, P.J., and MURPHY and STEPHENS, JJ.

PER CURIAM.

Following a jury trial, defendant Charles Michael Houck was convicted of prisoner in possession of a weapon, MCL 800.283(4), and assault with a dangerous weapon, MCL 750.82. He was sentenced as a second-offense habitual offender, MCL 769.10, to 45 to 90 months' imprisonment for prisoner in possession of a weapon and 45 months to 6 years' imprisonment for assault with a dangerous weapon. Defendant appeals by right. We affirm.

Defendant first argues that there was insufficient evidence to support his prisoner in possession of a weapon conviction. We review the sufficiency of the evidence de novo. *People v Harverson*, 291 Mich App 171, 177; 804 NW2d 757 (2010). In doing so, we view “the evidence in the light most favorable to the prosecution” and determine “whether a rational trier of fact could find that the evidence proved the essential elements of the crime beyond a reasonable doubt.” *Id.* at 175.

The prisoner in possession of a weapon statute, MCL 800.283(4), provides:

Unless authorized by the chief administrator of the correctional facility, a prisoner shall not have in his or her possession or under his or her control a weapon or other implement which may be used to injure a prisoner or other person, or to assist a prisoner to escape from imprisonment.

On appeal, the only sufficiency argument that defendant raises is whether there was sufficient evidence to support that the razor blade he possessed was unauthorized. Thus, the issue on appeal involves the meaning of the phrase “unless authorized.” The statute does not provide a definition of authorized in the context of MCL 800.234. When interpreting statutory text, the undefined “words and phrases shall be construed and understood according to the common and approved usage of the language.” *People v Laidler*, 491 Mich 339, 347; 817

NW2d 517 (2012), quoting MCL 8.3a. This Court may consult a dictionary to assist in determining the ordinary meaning of undefined words in a statute. *Id.* According to *Merriam-Webster's Collegiate Dictionary* (11th ed), to “authorize” means “to establish by or as if by authority: SANCTION.” The definition provides a synonymous cross reference to “sanction,” which means “explicit or official approval, permission, or ratification.” *Id.* The word “unless” shows that the Legislature intended to broadly punish all possession except when “the chief administrator of the correctional facility” officially approved. MCL 800.283(4); *Merriam-Webster's Collegiate Dictionary* (11th ed) (defining “unless” as “except on the condition that”). Further, the plain language of the statute demonstrates that the Legislature intended to prohibit prisoners from possessing weapons or other items that can injure the prisoner or other people.

In this case, defendant constructed a knife by wrapping a book cover around a razor blade, which he used to cut another inmate’s face. A corrections supervisor testified that inmates were only given one razor at a time and were supposed to return the razor. He further stated that if the razor was not handed back in, the inmate and his cell were searched. Because inmates were only given one razor at a time and were searched if they did not return it, a rational juror could reasonably infer that defendant was not authorized to remove the razor blade from a razor, keep it, modify it for use as a weapon, and use it to cut someone’s face. “Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime.” *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005). Moreover, defendant discarded the weapon in a garbage can after he used it to harm the other inmate, which also permits a reasonable inference that he was not authorized to possess the razor blade in its modified state. Therefore, viewing the evidence in a light most favorable to the prosecution, we conclude there was sufficient evidence for a rational trier of fact to find defendant guilty of prisoner in possession of a weapon. *Harverson*, 291 Mich App at 175.

Next, defendant argues that lay witness testimony identifying him in a surveillance video invaded the province of the jury. We review this unpreserved issue for plain error. *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003). Defendant must show: (1) an error, (2) that was plain, clear or obvious, and (3) that affected his substantial rights. *Id.*

Lay opinion testimony is admissible under MRE 701 when the witness limits opinions or inferences to those “(a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue, and (c) not based in scientific, technical, or other specialized knowledge[.]” But a witness may not invade the province of the jury by expressing an opinion on the defendant’s guilt or innocence. *People v Fomby*, 300 Mich App 46, 53; 831 NW2d 887 (2013). In *Fomby*, this Court held that the lay opinion testimony did not invade the province of the jury because the lay witness was “in the best position to identify the individuals in the photographs as being the same as those depicted in the video” and he did not express an opinion as to defendant’s guilt or innocence. *Id.*

On appeal, defendant concedes that the lay witness testimony was based on the witness’s own perceptions. Additionally, defendant does not argue that the testimony was not helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue. Defendant only argues that the province of the jury was invaded because the witness was in no better position than the jury to identify defendant in the video, and this identification was an improper expression of his guilt or innocence. This argument is without merit. The lay witness was a

prison counselor, which made him responsible for many things, including prisoner case management, dealing with inmate concerns, prisoner kites, transfer screenings, and becoming familiar with each prisoner to ensure placement in the most appropriate custody level. Every day he had “to go door to door and look at every single inmate and address any concerns that they may have, along with things such as picking up legal mail.” Moreover, the witness was specifically familiar with defendant through his regular case management and other dealings. The witness testified that he dealt with defendant enough to have his prison number memorized. The witness was able to identify defendant because he was aware of defendant’s and other inmate’s mannerisms, and he viewed the video the incident in slow motion. Furthermore, the witness was able to use process of elimination to help identify defendant because he knew that only certain inmates were in that particular area at that time. Finally, the witness had knowledge of defendant’s appearance on the day of the incident compared to his appearance since the incident. Because the witness was familiar with defendant’s mannerisms, his appearance on the day of the incident, and had knowledge of which inmates were in that area, his identification of defendant was rationally based on his perception. MRE 701.

In addition, the witness’s identification was not an expression of defendant’s guilt or innocence of the charged offense; he did not testify that defendant was guilty of prisoner in possession of a weapon or assault with a dangerous weapon. Defendant acknowledges this in his brief, stating that the witness “did not assert that he could see the man he claimed to be [defendant] actually commit the assault on the video.” Moreover, the jury had the opportunity to compare defendant’s appearance with the surveillance video and weigh the credibility of the testimony; therefore, the witness’s identification of defendant did not invade the province of the jury. *Fomby*, 300 Mich App at 53. Accordingly, defendant has not demonstrated the existence of any error, much less a clear or obvious error, in the admission of lay opinion testimony identifying him. *Jones*, 468 Mich at 355.

Finally, defendant asserts that defense counsel was ineffective for failing to object to the testimony that identified him in the video. To show ineffective assistance of counsel, a defendant must establish: (1) “his attorney’s performance fell below an objective standard of reasonableness,” and (2) “this performance so prejudiced him” that there exists “a reasonable probability that the outcome would have been different but for counsel’s errors.” *People v Grant*, 470 Mich 477, 485-486; 684 NW2d 686 (2004). As discussed above, because the lay opinion testimony was properly admitted, any objection to this testimony would have been futile, and failing to “raise a futile objection does not constitute ineffective assistance of counsel. *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

We affirm.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Cynthia Diane Stephens