

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS WALLACE,

Defendant-Appellant.

UNPUBLISHED

July 27, 1999

No. 205416

Recorder's Court

LC No. 96-007610

Before: Collins, P.J., and Jansen and White, JJ.

PER CURIAM.

Defendant was charged with first-degree murder (premeditated), MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, and felony-firearm, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to ten to twenty-five years in prison for the second-degree murder conviction and two years in prison for the felony-firearm conviction. Defendant appeals as of right, and we affirm.

Defendant first argues that he was denied his right to an impartial jury when the trial court refused to find that the jury was tainted. This Court reviews a trial court's determination that a juror has the ability to render an impartial verdict or that a juror is biased or prejudiced for an abuse of discretion. *People v Roupe*, 150 Mich App 469, 474; 389 NW2d 449 (1986).

Reversible error will not be presumed merely because a jury is exposed to prejudicial remarks made by a stranger or a bystander. *People v Hayes*, 126 Mich App 721, 729; 337 NW2d 905 (1983). "Prejudice must be shown, or facts clearly establishing the inference that it occurred from what was said or done. A mere possibility is not sufficient." *Id.* (citing *People v Nick*, 360 Mich 219, 227; 103 NW2d 435 (1960)).

In the instant case, defendant failed to make the requisite showing of prejudice. Germaine Small and Marcus Taylor, friends of defendant, testified that they witnessed someone from the victim's family talking to William Travis, the jury foreman. However, the victim's father and brother denied talking to anyone except a relative who was later dismissed from the jury pool. Further, they testified that the only

thing they said to the potential juror they did speak to concerned his being disqualified because of the family relationship. There was no evidence that anything else was said to any juror.

The foreperson denied speaking to anyone in the hallway leading to the courtroom. He denied speaking to anyone from the victim's family. Two other jurors also did not see anyone speak or shake hands with a jury member outside the courtroom on the day in question. Because no unauthorized communication was established, let alone prejudicial communication, we find that the trial court did not abuse its discretion.

Defendant next argues that his convictions should be reversed because the jury conducted outside research during deliberations. Although defendant contends that, based on the jury notes, the jury consulted a dictionary to define the terms "evidence," "evidenced," and "law," defendant presents no evidence, other than the phrasing of the definitions, that the jury consulted the dictionary. Moreover, even if there was evidence that the jury consulted a dictionary, this Court has held that a jury's use of dictionary definitions was not prejudicial where the court's instructions were substantively identical to the dictionary definition. *People v Messenger*, 221 Mich App 171,176-177; 561 NW2d 463 (1997). Here, defendant was not prejudiced because the dictionary definitions did not conflict with the trial court's definitions of the terms.

Finally, defendant argues that he is entitled to a new trial because there was insufficient evidence of premeditation and deliberation to support the charge of first-degree murder. He argues that although he was convicted of second-degree murder, he was nevertheless prejudiced by the submission of the first-degree charge to the jury because there was potential jury compromise where he was convicted of the next-lesser offense after the improperly submitted offense. *People v Graves*, 458 Mich 476, 487-488; 581 NW2d 229 (1998).

Defendant did not move for a directed verdict on the greater offense or object to the jury being instructed as to that offense. Under these circumstances, assuming *arguendo* that there was insufficient evidence to submit the greater offense to the jury, defendant may not urge automatic reversal and presumed prejudice from the unchallenged submission of that offense to the jury. Given the testimony, it is highly unlikely that the jury would have opted for a manslaughter conviction had the first-degree charge not been submitted.

Affirmed.

/s/ Jeffrey G. Collins
/s/ Kathleen Jansen
/s/ Helene N. White