

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES McDONALD,

Defendant-Appellant.

UNPUBLISHED

May 17, 1996

No. 176732

LC No. 93-05940

Before: Jansen, P.J., and McDonald and D.C. Kolenda,* JJ.

MEMORANDUM.

Following a jury trial Defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, careless and reckless use of a firearm, MCL 752.86l; MSA 28.436(2l) and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2) and resulting prison sentences of from six years eight months to ten years, six months to two years and a consecutive two years respectively. We affirm.

The prosecutor's questions during cross examination of defendant and comments during closing arguments did not deprive defendant of his right to a fair and impartial trial. *People v Allen*, 201 Mich App 98; 505 NW2d 869 (1993). Any possible prejudice resulting from the prosecution's questions and comments was cured by the court's instruction to the jury. Nor do we find any abuse of discretion in the trial court's denial of defendant's requested lesser included misdemeanor instruction. *People v Stephens*, 416 Mich 252 ; 330 NW2d 675 (1982). A trial court has substantial discretion to determine whether the cause of justice would be served by giving lesser included misdemeanor instructions on the facts of any given case. *People v Steele*, 429 Mich 13 ; 412 NW2d 206 (1987).

Finally, we find no abuse of discretion in the court's imposition of defendant's sentences. A sentencing judge may consider other criminal activities established at trial even when the defendant has been acquitted of the charge. *People v Coulter (aft /rem)*, 205 Mich App 453; 517 NW2d 827 (1994).

* Circuit judge, sitting on the Court of Appeals by assignment.

The sentences imposed are proportionate to both the offense and the offender. *People v Milbourn*, 435 Mich 630 ; 461 NW2d 1 (1990).

Affirmed.

/s/ Kathleen Jansen

/s/ Gary R. McDonald

/s/ Dennis C. Kolenda