

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 177282

LC No. 93-001571-FC

DAVID LEWIS ALLEN,

Defendant-Appellant.

Before: Hood, P.J., and Griffin and J. F. Foley,* JJ.

GRIFFIN, J. (concurring in part and dissenting in part).

I concur and join in that portion of the majority's opinion that affirms defendant's convictions for second-degree murder and felony-firearm. However, I respectfully dissent as to the reversal of defendant's conviction for escape from lawful custody.

Defendant did not object to the trial court's instruction regarding escape from lawful custody. Accordingly, relief may be granted only if necessary to avoid manifest injustice to defendant. *People v Van Dorsten*, 441 Mich 540; 494 NW2d 737 (1993); see also MCL 769.26; MSA 28.1096 and MCR 2.613(A). Under the undisputed facts of this case, I find no manifest injustice in defendant's conviction of escape from lawful custody, MCL 750.197(a); MSA 28.394(1). Defendant has admitted to committing the elements of the offense. Specifically, defendant admitted that while he was being moved to the county jail, he escaped from police custody by running 2½ blocks from the police. Defendant, who was handcuffed during his escape, was recaptured only after he tripped and fell on a street curb.

Although the trial court should not have given an instruction on attempted escape, based on the admitted facts that clearly show that an escape occurred, I find no manifest injustice in defendant's conviction.

I would affirm.

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

/s/ Richard Allen Griffin