STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERMAINE D. HUNTER,

Defendant-Appellant.

UNPUBLISHED
October 4, 1996

No. 185890
LC No. 94-008988

Before: Reilly, P.J., and Sawyer and W.E. Collette,* JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of second-degree murder, MCL 750.317; MSA 28.549, assault with intent to commit murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to serve concurrent terms of thirty-five to sixty years for the second-degree murder conviction and life for the assault with intent to commit murder conviction, consecutive to two years for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the prosecution failed to present sufficient evidence to establish beyond a reasonable doubt that defendant committed the crimes of second-degree murder and assault with intent to commit murder. We disagree. When considering a sufficiency of the evidence challenge, an appellate court, viewing the evidence in the light most favorable to the prosecution, must determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992); *People v Hampton*, 407 Mich 354, 366; 285 NW2d 284 (1979).

The testimony established that defendant caused the death of decedent and that the killing was done with malice and without legal justification. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993); *People v Neal*, 201 Mich App 650, 654; 506 NW2d 618 (1993); *People v Spearman*, 195 Mich App 434, 438; 491 NW2d 606 (1992). Here, defendant pointed a nine millimeter handgun at decedent. When decedent attempted to leave defendant's house, defendant followed in pursuit and

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

fired multiple shots into the unarmed decedent. Moreover, defendant, after having downed complainant, returned to decedent and, at close range, "emptied the clip" into decedent's prostrate body. Clearly, this evidence supports defendant's conviction of second-degree murder.

Likewise, there was sufficient evidence to convict defendant of assault with intent to commit murder. The elements of assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Lawton*, 196 Mich App 341, 350; 492 NW2d 810 (1992). Intent to kill may be inferred from any facts in evidence. *Id.* Here, defendant, while in possession of a handgun, chased complainant down the street. Defendant discharged the gun several times, hitting complainant in the back and eye. This evidence was sufficient to show the commission of assault with intent to commit murder.

Defendant next argues that an allegedly improper remark made by the trial court during defense counsel's cross-examination of a prosecution witness deprived him of a fair trial. We disagree. A trial court has broad, but not unlimited, discretion in the matter of trial conduct. Consequently, in reviewing a claim of judicial misconduct, we review the record in its entirety and determine whether the trial court's "conduct or comments unduly influence[d] the jury and thereby deprive[d] the defendant of a fair and impartial trial." *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995).

Careful review of the entire exchange between the court and defense counsel demonstrates that the trial court was simply cautioning the jury that "evidence comes from the answers of witnesses and not from the questions of attorneys." Because this Court previously held that a similar instruction was "standard and accurately states the law," *People v Lee*, 212 Mich App 228, 256-257; 537 NW2d 233 (1995), we find that the court's remark did not unduly influence the jury and therefore did not deprive defendant of a fair and impartial trial.

Defendant next argues that the sentence imposed for his second-degree murder conviction violates the principle of proportionality. We disagree. We review a given sentence for an abuse of discretion. *People v Poppa*, 193 Mich App 184, 187; 483 NW2d 667 (1992). A sentencing court has abused its discretion when a sentence is not proportionate "to the seriousness of the circumstances surrounding the offense and the offender." *Id*. In tailoring a particular sentence, the sentencing court may consider the facts underlying uncharged offenses, pending charges, and acquittals. *People v Coulter*, 205 Mich App 453, 456; 528 NW2d 736 (1994).

In this case, the guidelines recommended a minimum sentence range of ten to twenty-five years. Although the court exceeded the guidelines by imposing a minimum term of thirty-five years for defendant's second-degree murder conviction, we find, upon review of the record, that the nature of the offense and the background of the offender adequately justified the court's decision. As characterized by the sentencing court, defendant performed an "execution" style killing of decedent. Moreover, defendant, an "unemployed high school dropout," was waiting to stand trial in a second case for second-degree murder and felony-firearm. Apparently, defendant argued with, then repeatedly shot and killed, another man. Given that the court tailored the sentence to fit the offense and the offender, we find no abuse of discretion.

Defendant also argues that the trial court erred in refusing to instruct the jury on the claim of self-defense. We disagree. When presented with an instructional challenge, we review the jury instructions as a whole for error. *People v Bell*, 209 Mich App 273, 276; 530 NW2d 167 (1995). Even if somewhat imperfect, instructions do not create error if they fairly presented the issues to be tried and sufficiently protected the defendant's rights. *People v Wolford*, 189 Mich App 478, 481; 473 NW2d 767 (1991).

A trial court need only instruct with regard to a particular defense where there is some evidence to support giving that instruction. *People v Cross*, 187 Mich App 204, 206; 466 NW2d 368 (1991); see also *People v Coddington*, 188 Mich App 584, 604 (1991). Because there was no evidence to support defendant's claim of self-defense, we find no error in the trial court's denial of defendant's request for such an instruction.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ David H. Sawyer
/s/ William E. Collette