

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER B. LAKE,

Defendant-Appellant.

UNPUBLISHED

January 28, 1997

No. 190182

Recorder's Court

LC No. 95-003032

Before: Doctoroff, P.J. and Hood and P. J. Sullivan,* JJ.

PER CURIAM.

Defendant was charged with assault with intent to commit murder, MCL 750.83; MSA 28.278, and armed robbery, MCL 750.529; MSA 28.797. He was convicted, following a jury trial, of felonious assault, MCL 750.82; MSA 28.277, and unarmed robbery, MCL 750.530; MSA 28.798. He was sentenced to serve concurrent terms of one to four years' imprisonment for his felonious assault conviction and five to fifteen years' imprisonment for his unarmed robbery conviction and appeals as of right. We affirm.

Defendant argues that he was denied effective assistance of counsel because counsel (1) failed to investigate and call to testify three witnesses, and (2) failed to fully and effectively cross-examine the prosecution's witnesses. We disagree.

In order to establish ineffective assistance of counsel, the defendant must show that, under an objective standard of reasonableness, counsel's performance was deficient and was prejudicial to the defendant's case. Further, the defendant must overcome the presumption that the challenged action could be considered sound trial strategy. *People v Johnson*, 451 Mich 115, 124; 545 NW2d 637 (1996); *People v LaVearn*, 448 Mich 207, 213; 528 NW2d 721 (1995); *People v Eloby (Aft Rem)*, 215 Mich App 472, 476; 547 NW2d 48 (1996). Upon thorough review of the record, we conclude that defendant has neither sustained his burden of proving that counsel made a serious error that affected the result of trial nor overcome the presumption that counsel's actions were strategic.

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

Defendant next argues that the trial court erred in failing to adequately instruct the jury. We disagree. We review jury instructions in their entirety to establish reversible error. *People v Davis*, 216 Mich App 47, 54; 549 NW2d 1 (1996); *People v Bell*, 209 Mich App 273, 276; 530 NW2d 167 (1995). The instructions must include all elements of the charged offense and must not exclude material issues, defenses and theories supported by the evidence. *Davis, supra*. 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. *Id.*

Specifically, defendant argues that the trial court erred in denying his request for a self-defense instruction. The failure to give a requested instruction requires reversal "only if the requested instruction (1) is substantially correct, (2) was not substantially covered in the charge given to the jury, and (3) concerns an important point in the trial so that the failure to give it seriously impaired the defendant's ability to effectively present a given defense." *People v Moldenhauer*, 210 Mich App 158, 159-160; 533 NW2d 9 (1995). However, a trial court need only instruct with regard to a particular defense where there is some evidence to support giving the instruction. *People v Cross*, 187 Mich App 204, 206; 466 NW2d 368 (1991); see also *People v Coddington*, 188 Mich App 584, 604; 470 NW2d 478 (1991). In the instant case, defendant failed to present any evidence to support a claim of self-defense. The testimony reveals that defendant was the only individual in possession of a weapon, that he wielded his knife in response to a nonthreatening verbal remark, and that he refused to surrender the knife even after complainant managed to restrain defendant's wrists. In fact, complainant suffered a knife wound and collapsed lung, and was hospitalized for 32 days. Clearly, the aggressive nature of defendant's actions do not support a claim of self-defense. Accordingly, we find that the trial court did not err in declining to give the requested instruction.

Defendant also argues that the trial court erred in failing to instruct the jury on specific intent. Review of the instructions given, however, reveals that the trial judge properly instructed the jury on the requisite intent element of each of the charged offenses, as well as of the lesser included crimes of felonious assault and unarmed robbery. The trial judge told the jury that, in order to convict defendant of felonious assault, it must find beyond a reasonable doubt that "the defendant intended either to injure [complainant] or to make [complainant] reasonably fear an immediate battery." The judge also instructed the jury that, in order to convict defendant of unarmed robbery, it must find beyond a reasonable doubt that "at the time he took the money, the defendant intended to take it away from [complainant] permanently." Because a trial court's failure to give a specific intent instruction does not constitute reversible error where it adequately informs the jury of the specific intent required for a particular offense, we conclude, upon review of the instructions as a whole, that the trial judge's failure to specifically mention felonious assault and unarmed robbery as specific intent crimes is not grounds for reversal. *People v Perry*, 172 Mich App 609, 624; 432 NW2d 377 (1988); *People v Wilson*, 159 Mich App 345, 351-352; 406 NW2d 294 (1987); *People v Yarrowborough*, 131 Mich App 579, 581; 345 NW2d 650 (1983).

Finally, defendant argues that his Sixth Amendment right of confrontation was violated when the trial court limited his cross-examination of prosecution witness Dr. Marius Katilius. Specifically, defendant argues that the trial court abused its discretion in refusing to permit defense counsel to

question Katilius regarding complainant's participation in a poker game on the night in question. We disagree. We review a trial court's decision to limit the scope of cross-examination for an abuse of discretion. *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992); *People v Williams*, 191 Mich App 269, 275; 477 NW2d 877 (1991).

A trial judge may impose reasonable limits on cross-examination based on concerns about harassment, prejudice, confusion of the issues, witness' safety, or interrogation on repetitive or only marginally relevant matters. *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). Here, defense counsel sought to question Katilius about a statement made to him by complainant. Apparently, complainant told Katilius that, prior to the stabbing, he had been playing poker. On the witness stand, however, complainant testified that, on the night in question, he had not been playing poker. Defendant wanted to use the statement to impeach complainant's trial testimony, but the trial judge foreclosed his attempt. Clearly, complainant's statements regarding his participation, or non-participation, in a poker game were (related to or concerning) a collateral matter. A witness may not be impeached by means of a prior inconsistent statement where the subject matter of the statement relates only to a collateral matter not at issue, *People v Allen*, 118 Mich App 537, 543-544; 325 NW2d 485 (1982). Therefore, the trial court did not abuse its discretion by refusing to permit defense counsel to question Katilius regarding the statement.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Paul J. Sullivan