

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS WOODS, a/k/a
COREY MILLER,

Defendant-Appellant.

UNPUBLISHED

April 8, 1997

No. 188615

Detroit Recorder's Court

LC No. 94-009791

Before: Holbrook, Jr., P.J., and White and S. J. Latreille*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, and was sentenced to twenty-five to fifty years' imprisonment. We affirm.

Defendant claims that the jury instructions read in this case were deficient. He argues that the jury instructions: 1) allowed the jury to convict defendant as the principal actor, as opposed to an aider and abettor; 2) were abstract and unclear; 3) inadequately instructed on defendant's theory of the case; and 4) allowed the jury to infer defendant's presence at the crime scene.

Jury instructions are to be read as a whole rather than extracted piecemeal to establish 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).

Defendant failed to object to the alleged errors in the jury instructions at trial. Failure to object to jury instructions waives error unless relief is necessary to avoid manifest injustice. MCL 768.29; MSA 28.1052; *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993); *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995). We have reviewed the jury instructions, and conclude that the instructions were adequate and that no manifest injustice will arise from our failure to review this issue further. As to the failure to instruct regarding defendant's theory, we conclude the

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

error was harmless. The jury instructions fairly presented the issues to be tried and sufficiently protected defendant's rights. *Wolford, supra*, 481. Accordingly, reversal is not warranted.

Defendant next argues that he was denied a fair and impartial trial due to prosecutorial misconduct during closing arguments. However, defendant failed to object to the prosecutor's alleged misconduct, and we find that a proper instruction would have cured any resultant prejudice and no manifest injustice will result from our failure to further review the issue. *People v Stanaway*, 446 Mich 643, 686; 521 NW2d 557 (1994).

Defendant next argues that he was denied the effective assistance of counsel at trial because his counsel failed to object to the alleged deficient jury instructions and the alleged prosecutorial misconduct during closing argument. Claims of ineffective assistance of counsel based on defense counsel's failure to object or make motions which could not have affected defendant's chances for acquittal are without merit. *People v Lyles*, 148 Mich App 583, 596; 385 NW2d 676 (1986). We are satisfied from the record that counsel's failure to object did not impinge on defendant's chances of acquittal. Therefore, defendant did not receive ineffective assistance of counsel.

In a supplemental brief, defendant argues that there was insufficient evidence of aiding and abetting second-degree murder to support the verdict, in that defendant "knew" that the principal was unarmed. We disagree.

We review a claim of insufficient evidence by viewing the evidence in a light most favorable to the prosecution and determining whether a rational trier of fact could have found the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-514; 489 NW2d 748, modified on other grounds 441 Mich 1201-1202 (1992). To support a finding that a defendant aided and abetted, the prosecutor is required to establish that 1) a crime was committed either by the defendant or another, 2) the defendant performed acts or gave encouragement that aided or assisted in the commission of the crime, and 3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave the aid or encouragement. *People v Turner*, 213 Mich 558, 568; 540 NW2d 728 (1995). In order to convict a defendant of murder, it must be shown that he acted with intent to kill or to inflict great bodily harm or with a wanton and willful disregard of the likelihood that the natural tendency of his behavior is to cause death or great bodily harm. *People v Johnson (On Rehearing)*, 208 Mich App 137, 140; 526 NW2d 617 (1994).

Antoine Woods testified that Ross had called him and said that defendant wanted them to "beat somebody down" for \$60.00. Soon after the call, defendant and Ross arrived at Antoine's house in defendant's car, and defendant opened his trunk so that Ross could place his gun in the trunk. Later that evening, defendant drove Ross and Antoine to the victim's work place and pointed the victim out to them. Around midnight, defendant drove Ross and Antoine to the victim's house to show them where it was and dropped them off about a block away. Soon after, the victim pulled into his driveway and garage. Ross ran after him, pulling a gun, and entered the garage, where multiple shots were fired. From this evidence a rational trier of fact could have

found that defendant knowingly created a very high risk of death or great bodily harm knowing that death or such harm would likely result. *Johnson, supra* at 140-141.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Helene N. White

/s/ Stanley J. Latreille