

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLYDE JORDAN,

Defendant-Appellant.

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UNPUBLISHED

April 29, 1997

No. 172267

Recorder's Court

LC No. 93-005473

Before: Young, P.J., and Taylor and R.C. Livo,\* JJ.

PER CURIAM.

Defendant, Clyde Jordan, was convicted following a jury trial of first-degree murder, MCL 750.316; MSA 28.548, assault with intent to commit murder, MCL 750.83; MSA 28.278, and two counts of 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 life imprisonment without parole for the first-degree murder conviction and twenty to thirty years of imprisonment for the assault with intent to commit murder conviction, to be served consecutive to concurrent terms of two years for each count of felony-firearm. He now appeals as of right. We affirm.

Defendant raises several instructional challenges. Defendant argues that the trial court failed specifically to instruct the jury as to the intent element of voluntary manslaughter, that the court erred in instructing the jury that it could infer malice from defendant's use of a dangerous weapon, and that the court failed to apprise the jury of defendant's right to claim self-defense in a multiple attacker situation. We disagree. Given that defendant did not object to these instructions, appellate review is precluded unless failure to review this issue will result in manifest injustice. *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995). Defendant alternatively claims his counsel was ineffective for failing to object to these instructions.

After instructing the jury on first- and second-degree murder, the court instructed the jury with CJI2d 16.9 regarding voluntary manslaughter. In *People v Paquette*, 214 Mich App 336, 339-340; 543 NW2d 342 (1995), this Court upheld the use of CJI2d 16.9 when instructing a jury regarding

voluntary manslaughter. Therefore, the jury was adequately instructed regarding the elements of voluntary manslaughter, and use of this instruction did not deny defendant a fair trial.

Next, contrary to defendant's contentions, the trial court did not instruct the jury that malice is inferred as a matter of law because defendant used a dangerous weapon. Instead, the court instructed the jury that it *may* infer malice if it found that defendant used a dangerous weapon in a way that was likely to cause death. As such, the lower court properly instructed the jury that it was permitted to infer an intent to kill based on defendant's use of a dangerous weapon. See *People v Martin*, 392 Mich 553, 561-562; 221 NW2d 336 (1974).

Defendant also argues that the trial court erred when instructing the jury regarding self-defense in a situation involving multiple attackers. Reviewed in context, the instructions properly advised the jury that a defendant is justified in acting in self-defense if attacked by more than one person as long as defendant was placed in reasonable fear of death or serious injury from the person who defendant hurt or killed. See *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990); *People v Johnson*, 112 Mich App 483, 486-487; 316 NW2d 247 (1982).

Accordingly, because the court properly instructed the jury, defendant was not denied a fair trial nor ineffective assistance of counsel.

Defendant also argues that the prosecutor's remarks during closing and rebuttal arguments denied defendant a fair trial. Specifically, defendant challenges the prosecutor's assertion that defendant and defense witness Tinsley Walls fabricated a story to exculpate defendant. Because defendant failed to object below to the prosecutor's alleged impropriety, appellate review is precluded unless a curative instruction could not have eliminated the prejudicial effect or the failure to consider the issue would result in a miscarriage of justice. *People v Lee*, 212 Mich App 228, 245; 537 NW2d 233 (1995); *People v Vaughn*, 186 Mich App 376, 384-385; 465 NW2d 365 (1990). Careful review of the record reveals that the prosecutor's argument (that defendant and Walls were not credible witnesses) was supported by the evidence. *People v Gilbert*, 183 Mich App 741, 745-746; 455 NW2d 731 (1990); *People v Cowell*, 44 Mich App 623, 628-629; 205 NW2d 600 (1973).

At trial, Walls denied being related to defendant and denied having discussed the shooting incident with defendant at the hospital. Defendant, however, testified that, in fact, Walls is his uncle and that he and his uncle discussed the shooting in detail. Based on the contradictions in their testimony, the prosecutor's claim was not improper. Moreover, the trial court's instruction to the jury, that "[t]he lawyers statements and arguments are not evidence," cured any potential for prejudice. *Lee, supra*; *Vaughn, supra*.

Lastly, defendant argues that he was denied a fair trial because the trial court admitted the testimony of defendant's girlfriend. Defendant alleges that the police intimidated his girlfriend with threats of jail and that they threatened to remove her children from her care and custody. Defendant failed to object below on the same evidentiary grounds raised on appeal; therefore, we only review this issue because it involves a constitutional question: whether defendant was denied a fair trial when the

trial court admitted the testimony of an allegedly intimidated witness. *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994).

Defendant's girlfriend testified that she was a reluctant witness and had been threatened. A portion of her letter to defendant, claiming police intimidation, was introduced at trial. Yet, at trial, she testified that was telling the truth. Thus, our review of her testimony indicates that the jury was able to fairly assess this witness' credibility and, therefore, defendant was not denied a fair trial. *People v Stacy*, 193 Mich App 19, 25; 484 NW2d 675 (1992).

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Clifford W. Taylor

/s/ Robert C. Livo