

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT THOMAS ARUNDEL,

Defendant-Appellant.

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UNPUBLISHED

September 26, 1997

No. 192620

Wayne Circuit Court

LC No. 95-008655

Before: Holbrook, Jr., P.J., and White and R.J. Danhof\*, JJ.

MEMORANDUM.

Defendant appeals as of right from his jury trial conviction of felonious assault, MCL 750.82; MSA 28.277. We affirm.

Defendant first argues that the trial court erred in failing to instruct the jury that its verdict must be unanimous regarding defendant's participation in the offense as either a principal or as an aider and abettor. We disagree. This issue has not been properly preserved for appeal because defendant neither requested a separate unanimity instruction nor did he object to the general unanimity instruction given to the jury by the trial court. *People v Johnson*, 215 Mich App 658, 672; 547 NW2d 65 (1996). Thus, our review of the issue is limited to whether manifest injustice occurred. *Id.* A specific unanimity instruction is not warranted where more than one act is presented as evidence of the actus reus of a single criminal offense. *People v Cooks*, 446 Mich 503, 512; 521 NW2d 275 (1994). In enacting the aiding and abetting statute, MCL 767.39; MSA 28.979, Michigan abolished the distinction between principals and aiders and abettors. *People v Spicer*, 216 Mich App 270, 274; 548 NW2d 245 (1996). Thus, where as here evidence is presented that would allow a jury to find the defendant guilty as either a principal or an aider and abettor, a specific unanimity instruction to the jury is not warranted. See *People v Burgess*, 67 Mich App 214, 215; 240 NW2d 485 (1976); *People v Ewing (On Remand)*, 102 Mich App 81, 88; 300 NW2d 742 (1980). Accordingly, because the evidence in this case showed that defendant struck the victim while two others, with whom defendant was acting in concert, kicked and struck the victim with wooden sticks, we conclude that no manifest injustice occurred by the trial court's failure to give a specific unanimity instruction.

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

Defendant next argues that he was denied a fair trial when the prosecutor elicited testimony of the victim's injuries for the purpose of evoking the jury's sympathy. We disagree. Defendant objected at trial to the questioning regarding the victim's injuries on grounds of hearsay or lack of personal knowledge, not prosecutorial misconduct. An objection based on one ground at trial is insufficient to preserve an appellate attack based on a different ground. *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996). Therefore, our review of this issue is likewise precluded absent a showing of manifest injustice. *Johnson, supra*. We find no manifest injustice in this case because the victim's injuries were of consequence to the determination of defendant's guilt. *People v Mills*, 450 Mich 61, 68-69; 537 NW2d 909, modified 450 Mich 1212 (1995). The victim's injuries were relevant to whether the stick used in the crime was a dangerous weapon, *People v Kildow*, 19 Mich App 194; 172 NW2d 492 (1969), and relevant to defendant's intent, *Mills, supra* at 71.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Helene N. White

/s/ Robert J. Danhof