STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEON DILWORTH,

Defendant-Appellant.

UNPUBLISHED
October 3, 1997

No. 193147
Recorder's Court
LC No. 95-004531

Before: O'Connell, P.J., and White and C. F. Youngblood*, JJ.

MEMORANDUM.

Defendant appeals by right his jury convictions for felony-firearm and carrying a pistol in a motor vehicle. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that he was deprived of a fair trial with respect to the felony-firearm charge by the trial court's reference, during original and subsequently repeated instructions, to the attempt to commit a felony, without defining for the jury the legal principles underlying the law of attempt. On both occasions, although the nomenclature used to define the offense included a reference to attempt, as did the statute which was read to the jury, the jury was instructed that it had to find that defendant committed one of the substantive charged offenses beyond a reasonable doubt in order to convict defendant of the felony-firearm charge. There was no objection to either instruction.

This case therefore presents unpreserved, nonconstitutional error, which can rise to the level of reversible error only if it could have been decisive of the outcome or falls under the category of cases, yet to be clearly defined, where prejudice is presumed or reversal is automatic. *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994). Even if somewhat imperfect, there is no reversible error if the jury instructions fairly present the issues to be tried and sufficiently protect the defendant's rights. *People v Wolford*, 189 Mich App 478, 481; 473 NW2d 767 (1991).

Viewing the instructions as a whole, it is unclear whether the jury even considered the possibility of attempt. If not, the omission of certain references to attempt and the definition of attempt did not

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

harm defendant. Alternatively, in the context of the instant case, the concept of an attempt is sufficiently understandable even by lay jurors as to need no judicial definition. See *Victor v Nebraska*, 511 US ___; 114 S Ct 1239; 127 L Ed 2d 583 (1994) (holding that "reasonable doubt" is self-defining and criminal juries need not be instructed on the subject beyond use of the terminology itself).

This is not a situation where prejudice is presumed or reversal automatic, and the record fails to suggest that this claimed instructional deficiency was outcome determinative and resulted in an unfair determination of defendant's guilt of the felony-firearm charge.

Affirmed.

/s/ Peter D. O'Connell
/s/ Helene N. White
/s/ Carole F. Youngblood