

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRYL PRITCHETT,

Defendant-Appellant.

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UNPUBLISHED

May 1, 1998

No. 198350

Detroit Recorder's Court

LC No. 96-500110

Before: Gribbs, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

A jury convicted defendant of two counts of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant appeals as of right and we affirm.

Defendant was charged with two counts of assault with intent to murder after shooting a .22-caliber rifle at DeShawn and Serra Hunt, resulting in gunshot wounds to DeShawn. As the two brothers followed defendant to confront him about a rock that they suspected defendant had just thrown through their window, defendant pulled a .22 rifle from his jacket and shot at them. After the second bullet struck DeShawn, he and Serra ran; defendant shot approximately three more times in their direction.

I

Defendant first argues erroneously that there was insufficient evidence to support his convictions. In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Defendant says that there was no proof that defendant had a gun and, therefore, none of his convictions can be upheld. Although the gun was not recovered, there was testimony that defendant had a gun, that he shot at both Serra and DeShawn, that DeShawn actually was hit by a bullet, and that both brothers identified defendant as the attacker. Because there is evidence that defendant committed an assault with the intent to harm the Hunt brothers,

and because there was evidence that he possessed a firearm during the commission of this felony, the prosecution met its burden.

## II

Defendant next asserts that the trial court erred by failing to instruct the jury that it could not consider the possession of a BB or pellet gun as an element of the felony-firearm charge, but that there had to be evidence that defendant had the .22-caliber rifle before the jury could convict him of felony-firearm. However, defendant waived this issue by failing to specifically request the desired instruction and by not objecting to the ensuing omission by the trial court. See *People v Taylor*, 159 Mich App 468, 488; 406 NW2d 859 (1987); MCL 768.29; MSA 28.1052.

## III

Finally, defendant argues that the prosecutor improperly vouched for the credibility of the witnesses and gave his own opinion about the incredibility of defense witnesses. Again, defendant failed to preserve this issue for review because he failed to timely and specifically object, and because a curative instruction could have nullified any prejudice that might have resulted. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994), cert den sub nom *People v Caruso*, 513 US 1121; 115 S Ct 923; 130 L Ed 2d 802 (1995). Had defendant properly preserved this issue, the comments of which he complains did not rise to the level of prosecutorial misconduct, but rather, were proper argument from the facts. See *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996).

Affirmed.

/s/ Roman S. Gibbs  
/s/ Mark J. Cavanagh  
/s/ Henry William Saad