

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN CRUMBIE,

Defendant-Appellant.

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UNPUBLISHED

January 11, 2000

No. 207460

Recorder's Court

LC No. 96-009609

Before: Smolenski, P.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

Defendant was convicted of assault with intent to do great bodily harm, MCL 750.84; MSA 28.279, malicious destruction of property, MCL 750.377b; MSA 28.609(2), and possession of a firearm during the commission of a felony, MCL 750.277b; MSA 28.424(2). Defendant was sentenced to five to ten years in prison for the assault with intent to do great bodily harm conviction, two to four years in prison for the malicious destruction of property conviction and two years in prison for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant's first issue on appeal is that the trial court committed reversible error when it deviated from the standard jury instructions. We disagree. "The determination whether a jury instruction is accurate and applicable in view of all the factors present in a particular case lies within the sound discretion of the trial court." *People v Perry*, 218 Mich App 520, 526; 554 NW2d 362 (1996).

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). The reviewing court must balance the general tenor of the instructions in their entirety against the potentially misleading effect of a single isolated sentence. *People v Freedland*, 178 Mich App 761, 766; 444 NW2d 250 (1989). 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 Davis*, 216 Mich App 47, 54; 549 NW2d 1 (1996). No error results from the omission of an instruction if the instructions as a whole cover the substance of the omitted instruction. *People v Messenger*, 221 Mich App 171, 177-178; 561 NW2d 463 (1997).

Defendant argues that the trial court improperly strayed from the standard jury instructions. He does not contend that the instructions the court actually gave omitted any elements of the offenses charged, material issues, or defenses. *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994); *People v Moore*, 189 Mich App 315, 319; 472 NW2d 1 (1991). Rather, he implies that the trial court did not instruct the jury in an understandable manner, ultimately denying him a fair trial. See generally *Karas v White*, 101 Mich App 208, 211; 300 NW2d 320 (1980) (sufficiently confusing jury instructions may warrant a new trial). In *People v Federico*, 146 Mich App 776, 784; 381 NW2d 819 (1985), this Court found the following principles instructive in resolving the issue:

Where additional language contains ‘no pressure, threats, embarrassing assertions, or other wording that would cause this Court to feel that it constituted coercion,’ that additional language rarely would constitute a substantial departure. (citations omitted).

In the instant case, defendant takes issue with the court telling the jury that the complainant was functioning as a police officer at the time of the alleged assault. However, taken as a whole, the instructions were not inappropriate. Here, when viewed in the context in which it was made, we do not find the trial court’s comment regarding the complainant coercive in any way. Although it certainly was not required, it was not threatening, and we do not find it to be error requiring reversal of defendant’s convictions.

Second, defendant argues that the trial court unnecessarily included in the instructions the definitions of manslaughter and other types of homicides and also deviated from the instructions for specific intent. Again, when viewed as a whole, the jury instructions were properly presented. Although the inclusion of the manslaughter definition could have been confusing, when read within the context of the entire instruction, it is obvious that the court was attempting to distinguish assault with intent to murder from manslaughter. Furthermore, while the trial court mentioned intent during the manslaughter instruction, there was no complete instruction given. When balanced against the entire set of instructions, the general tenor of the instructions was proper.

Similarly, we do not find error requiring reversal arising from the trial court’s statement that identification was an important aspect of the case. The majority of the testimony in the case concerned the identity of defendant as the shooter. We therefore find that this statement was neither misleading nor coercive, and was consistent with the evidence presented at trial.

Next defendant argues that the prosecution failed to present sufficient evidence to convict defendant of assault with intent to do great bodily harm less than murder. We disagree. In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995), citing *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). This Court should not interfere with the trier of fact’s role of determining the weight of evidence or the credibility of witnesses. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Circumstantial evidence and the reasonable inferences which arise from the evidence can constitute

satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996).

“The elements of assault with intent to do great bodily harm less than murder are: (1) an attempt or offer with force or violence to do corporal hurt to another, (2) coupled with an intent to do great bodily harm less than murder.” *People v Pena*, 224 Mich App 650, 659; 569 NW2d 871 (1997), mod and remanded on other grounds 457 Mich 885 (1998). Defendant claims that there was insufficient evidence that defendant intended to cause great bodily harm less than murder because there was no evidence that defendant pointed the gun at a vital spot of the complainant police officer.

Here, there is overwhelming evidence that defendant intended to cause great bodily harm less than murder. Defendant flagged down two police officers in a patrol car. Defendant told the officers that someone needed help on the highway. When the police officer returned after looking at the highway, defendant said, “Get up off me,” reached for his gun, pointed and fired it at the officer. Based upon this evidence, a rational trier of fact could find that defendant intended to cause great bodily harm less than murder.

Defendant also argues on appeal that the trial court erred when it made improper rulings on evidentiary issues. We disagree. The decision whether evidence is admissible is within the trial court’s discretion and should only be reversed where there is a clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made. *People v Rice*, 235 Mich App 429, 439; 597 NW2d 843 (1999). Furthermore, in the absence of an objection, this Court may not review this issue unless there was a “plain error that affected substantial rights” and the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of [the] judicial proceedings. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

Defendant first claims that the trial court improperly allowed Officer Prude to testify to what Tina Turner and Shameka Turner told him when they came into the police station. However, Officer Prude only testified that the Turner sisters told him something concerning the complainant. He did not testify to what they actually said. Accordingly, defendant’s argument is meritless.

Second, defendant claims that the trial court erred when it permitted expert testimony from chemist William Steiner without first qualifying him as an expert witness. Here, the prosecutor questioned Steiner regarding his background and qualifications and then proceeded to solicit opinion testimony from Steiner. Significantly, defendant never objected or asked to voir dire Steiner. Further, defendant did not cross-examine Steiner. Thus, defendant has waived this issue for appeal. Defendant’s claim that the trial court erred when it failed to give the jury instructions on expert testimony is also without merit because defendant never requested such an instruction. The trial court’s admission of the above discussed evidence was neither singularly or cumulatively an abuse of discretion.

Defendant’s final issue on appeal is that his sentence for assault with intent to do great bodily harm was disproportionate. We disagree. This Court reviews the legality of a trial court’s imposition of

sentence for an abuse of discretion. *People v Houston*, 448 Mich 312, 319; 532 NW2d 508 (1995). A trial court abuses its discretion when it imposes a sentence that is not proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990).

Defendant's five-year minimum assault sentence is within the guidelines range of thirty-six to eighty months. A sentence imposed within an applicable sentencing guidelines range is presumptively neither excessively severe nor unfairly disparate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v Kennebrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996). According to *Milbourn, supra* at 661, sentences within the guidelines range can be an abuse of discretion in unusual circumstances, which are defined as "[u]ncommon," "not usual, rare." *People v Sharp*, 192 Mich App 501, 505; 481 NW2d 773 (1992), citing Black's Law Dictionary.

However, defendant did not point out any unusual circumstances that would warrant a sentence outside the guidelines range. Furthermore, the nature of defendant's crime was particularly violent and serious, and he has a history of disregarding the law as his prior convictions for breaking and entering a house trailer and armed bank robbery demonstrate. Accordingly, we find that defendant's sentence does not violate the principle of proportionality.

Affirmed.

/s/ Michael R. Smolenski

/s/ William C. Whitbeck

/s/ Brian K. Zahra