

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH EDWARD SPANSKI,

Defendant-Appellant.

UNPUBLISHED

October 18, 2005

No. 255292

Macomb Circuit Court

LC No. 03-003413-FH

Before: Talbot, P.J., and White and Wilder, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions of felonious assault, MCL 750.82, and domestic assault, third offense, MCL 750.81(4), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with assault with intent to do great bodily harm less than murder, MCL 750.84, felonious assault, domestic assault, third offense, and entry without permission, MCL 750.115, as a result of allegations that he entered the home of complainant, with whom he had three children, argued with her, and stabbed her with a sharp instrument. Defendant's theory of the case was that he acted in self-defense after complainant threw objects at him.

At defendant's request, the trial court instructed the jury on the use of non-deadly force in self-defense. CJI2d 7.22. This instruction provides in pertinent part that if a person acts in lawful self-defense, "his/her actions are excused and he/she is not guilty of any crime." CJI2d 7.22(1). In instructing the jury, the trial court stated that if a person acts in lawful self-defense, "his actions are excused if he's not—and he's not guilty of any crime." The jury convicted defendant of felonious assault and domestic assault, third offense, but acquitted him of assault with intent to do great bodily harm less than murder and unlawful entry.

We review jury instructions in their entirety to determine whether the trial court committed error requiring reversal. Even if somewhat imperfect, instructions do not create error if they fairly presented the issues for trial and sufficiently protected the defendant's rights. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). We review a claim of instructional error de novo. *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002).

A party who forfeits a right might still obtain appellate review for plain error, but a party who waives a known right cannot seek appellate review of a claimed deprivation of the right.

People v Carter, 462 Mich 206, 215; 612 NW2d 144 (2000). A party waives review of the propriety of jury instructions when he approves the instructions at trial. *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002).

We affirm. Defendant expressed satisfaction with the instructions as read by the trial court. By doing so, he has waived review of this issue. *Id.* Even if defendant had not waived review of the issue, he would not be entitled to relief. The trial court misspoke when reading CJI2d 7.22, but immediately corrected itself and recited the instruction as written. Furthermore, the trial court provided the jury with a written copy of the instruction to refer to during deliberations. Defendant's assertion that the trial court's error must have misled the jury is based entirely on speculation. He has not shown that the trial court's misstatement resulted in plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Affirmed.

/s/ Michael J. Talbot

/s/ Helene N. White

/s/ Kurtis T. Wilder