

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LACARO ROQUE,

Defendant-Appellant.

UNPUBLISHED

January 4, 2007

No. 263855

Wayne Circuit Court

LC No. 04-012683-01

Before: Borrello, P.J., and Neff and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of assault with intent to murder, MCL 750.83, possession of a firearm by a felon, MCL 750.224f, third-degree fleeing and eluding, MCL 257.602a(3), carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to 25 to 50 years' imprisonment for the assault conviction, two years' imprisonment for the felony-firearm conviction, and three to five years' imprisonment for each of the remaining convictions. For the reasons set forth in this opinion, we affirm defendant's convictions and sentences.

This case arose from a dispute between defendant and the victim, Larry Ryans. Defendant was staying in the basement of his friend's home. On December 1, 2004, defendant and the friend, Charles Coppage, were in the basement when the victim and his father, Larry Taylor, came over to Coppage's home. Shortly after the victim arrived, defendant and the victim began to argue, and defendant told the victim that he was paying rent to live in Coppage's basement and that the victim should therefore leave. Defendant and the victim began to push each other. According to testimony presented at trial, defendant then went back to his room, returned and shot the victim in the chest. After he was shot, the victim and his father fled the basement. Defendant attempted to follow them, but was prevented from doing so by Coppage. Neither Coppage nor Taylor saw the victim with a weapon, and the victim denied having any weapons at the time of the shooting. Police arrived at the scene of the shooting within 30 minutes, and as defendant came back to the home to pick up his belongings, police officers attempted to stop him and a police chase ensued. Defendant was eventually apprehended by police officers and taken into custody. Gunshot residue and a .380 shell casing were found on defendant's person.

A jury convicted defendant as explained above, and defendant appeals as of right.

Defendant first argues that the trial court erred in instructing the jury regarding the charge of assault with intent to murder. Defendant contends that the trial court's instruction permitted the jury to convict defendant of assault with intent to commit murder even if it found that defendant only intended to do great bodily harm. We review a claim of instructional error de novo. *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002).

A trial court is obligated to accurately instruct the jury on all of the essential elements of the crime. *People v Moldenhauer*, 210 Mich App 158, 159; 533 NW2d 9 (1995). Jury instructions must be read as a whole rather than extracted piecemeal to establish error. *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001). The reviewing court must balance the meaning of the instructions as a whole against the potentially misleading effect of an isolated sentence. *People v Freedland*, 178 Mich App 761, 766; 444 NW2d 250 (1989). Instructions that are somewhat imperfect do not create error if they fairly presented the issues to be tried and sufficiently protected the defendant's rights. *Aldrich*, *supra* at 124.

The following comprise the elements of assault with intent to commit murder: (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Brown*, 267 Mich App 141, 147-148; 703 NW2d 230 (2005). Thus, it is true, as defendant argues, that there must be an actual intent to kill in order for there to be a conviction of assault with intent to murder, and it is error to instruct the jury otherwise. *People v Taylor*, 422 Mich 554, 561, 567; 375 NW2d 1 (1985); *People v Brown*, 196 Mich App 153, 155, 159; 492 NW2d 770 (1992).

Following the close of proofs, the trial court instructed the jury on the elements of MCL 750.83 as follows:

Now, the charge in Count 1 in this case is Assault With Intent to Commit Murder. The Statute says:

“Any person who shall assault another person, with the intent to commit the crime of murder, shall be guilty of a felony.”

Now, there are certain elements, which the People must prove, beyond a reasonable doubt.

The first is an assault. An assault is merely putting a person in fear of bodily harm. The perpetrator, at the time of the assault, must have the means to carry out the assault.

First of all, there must be an assault. Pointing a weapon, in an [sic] of itself is an assault. *But for assault with intent to murder you have to go a step further. That at the time of the assault the perpetrator had the specific intent – specific intent is defined as a conscious decision of the mind to do a certain thing.*

That in this case not only was there an assault, but at the time the defendant *intended to kill the victim.*

Now, there are many ways that you can determine what the intent of a person is. *One is called expressed intent, where a person says, "I'm going to kill you."* That's expressed intent.

The other way is an implied intent, where no words are spoken, and you can determine the intent by circumstantial evidence. *You may infer an intent to kill by the use of a dangerous weapon. Guns and knives, are by their very nature, dangerous weapons. You may infer an intent to kill by the use of a gun or a knife.* And in this case it is alleged that the weapon was a gun.

You may also consider the location of the wounds, if any. Was the person shot in an area which was likely to cause death. That's another way you can determine what a person's intent is.

And the other one is the number of shots, or the number of wounds – the number of shots that were fired. You may consider that, to help you determine what the specific intent is.

The Statute, however, does not require that there be any wounds, whatsoever. If a person swings a knife at you, or if a person fires a weapon at you and they miss, *if that person intended to kill you the only thing that's necessary is the assault and the intent.* There need be no injury whatsoever.

In this case, however, there were injuries. And again, as I stated, you consider whether [sic] the wound was. Was it in an area that would cause death, or you also may consider the number of shots fired to help you to determine specific intent. Whether the person intended to cause the death of another person.

Those are the elements of Count 1. (Emphasis added.)

It is clear from the trial court's instructions that the trial court did not instruct the jury that it could find defendant guilty of assault with intent to murder if it found that defendant intended to do great bodily harm. Rather, the court went to great lengths to instruct the jury that it had to find that at the time of the shooting, defendant shot the victim with the specific intent to kill him. The record indicates that the trial court instructed the jury several times that, in order to convict defendant on the assault with intent to murder charge, it had to find that defendant acted with an actual intent to kill. Thus, when reviewed in context, the instructions fairly and accurately presented the issues to be tried. Accordingly, we find no error requiring reversal with respect to the trial court's jury instruction.

Defendant next argues that the trial court erred when it conducted jury voir dire itself. Defendant alleges that the trial court's decision to conduct voir dire resulted in the defense being unable to ascertain the bias of any of the proposed jurors. Decisions concerning the conduct of voir dire are reviewed for an abuse of discretion. *People v Williams*, 241 Mich App 519, 522; 616 NW2d 710 (2000). Trial courts "should be allowed wide discretion in the manner they

employ to achieve the goal of an impartial jury.” *People v Tyburski*, 445 Mich 606, 618-619; 518 NW2d 441 (1994).

“The function of voir dire is to elicit sufficient information from prospective jurors to enable the trial court and counsel to determine who should be disqualified from service on the basis of an inability to render decisions impartially.” *People v Sawyer*, 215 Mich App 183, 186; 545 NW2d 6 (1996). Our Supreme Court has stated that “[t]he trial court has discretion in both the scope and the conduct of voir dire” and that a defendant does not have a right to have counsel conduct the voir dire. *People v Washington*, 468 Mich 667, 674; 664 NW2d 203 (2003), quoting *Tyburski, supra* at 618-619. “However, where the trial court, rather than the attorneys, conducts voir dire, the court abuses its discretion if it does not adequately question jurors regarding potential bias so that challenges for cause can be intelligently exercised. *Id.*, citing *Fedorinchik v Stewart*, 289 Mich 436, 438-439; 286 NW 673 (1939).

Defendant contends that the trial court’s failure to ask all of the questions submitted by trial counsel during juror voir dire rendered it impossible to uncover any juror bias. However, the trial court did read into the record several of defendant’s proposed voir dire questions and gave specific and legally correct reasons for choosing not to read defense counsel’s voir dire questions. Many of defense counsel’s voir dire questions involved questions that the trial court had already addressed to the members of the jury. Many of the remainder of the questions presented by defense counsel were, as accurately described by the trial court, legal argument. Because the trial court began by introducing to the prospective jurors all the parties, attorneys, and expected witnesses, and asking all of the relevant questions that would bear on the bias of prospective jurors, we cannot find that the trial court abused its discretion in conducting voir dire or by not allowing certain voir dire questions posed by defendant to be asked of members of the jury. The trial court explored whether any of the potential jurors had been, or had family members who had been, the victim of a crime or convicted of a crime, and whether that would interfere with their judgment. The trial court asked whether any potential juror was related to anyone in law enforcement or if they had a bias either for or against the police. The trial court explained that the prosecution was required to overcome the presumption of innocence and explored whether any potential juror could not accept this tenet. The trial court questioned the potential jurors to make sure that they all could return a verdict of guilty if the prosecution proved its case beyond a reasonable doubt, and conversely that they all could return a verdict of not guilty if it did not. The trial court individually questioned each potential juror regarding their profession, marital status, and if any, their spouse’s profession. And finally, the trial court inquired of the potential jurors whether there was any other reason that might affect their objectivity or ability to fairly sit and hear the case.

In light of the trial court’s thorough and comprehensive questioning of the jury, we conclude that the trial court’s voir dire was not merely a “perfunctory exercise,” but was sufficiently probing to uncover potential juror bias.

Affirmed.

/s/ Stephen L. Borrello

/s/ Janet T. Neff

/s/ Jessica R. Cooper