

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEMAR BROOKS,

Defendant-Appellant.

UNPUBLISHED

April 15, 1997

No. 196740

Recorder's Court

LC No. 95-011019

Before: Holbrook, Jr., P.J., and Fitzgerald and Smolenski, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to commit murder, MCL 750.83; MSA 28.278, intentional discharge of a firearm from a motor vehicle, MCL 750.234a; MSA 28.431(1), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to concurrent terms of two to four years' imprisonment for the intentional discharge conviction and ten to twenty years' imprisonment for the assault conviction, such sentences to be served consecutively to the sentence of two years' imprisonment imposed for the felony-firearm conviction. Defendant appeals as of right. We affirm and remand.

Defendant first argues that the trial court committed error requiring reversal in instructing the jury that he could be found guilty as an aider and abettor to the victim's shooting if the jury found that he intended to assist another in the shooting. We disagree. The trial court did not err in giving the instruction because the evidence at trial established that defendant was the first person to shoot at the victim and his car, and the only one whom the victim identified as shooting directly at him. *People v Turner*, 213 Mich App 558, 568-569; 540 NW2d 728 (1995).

Moreover, the jury instructions, given as a whole, fairly presented to the jury the issues to be tried and sufficiently protected defendant's rights by including all elements of the crimes with which defendant stood charged and all defenses and theories supported by the evidence. *People v Curry*, 175 Mich App 33, 39; 437 NW2d 310 (1989). The trial court instructed the jury as to all three charged crimes and included a separate instruction regarding specific intent. The trial court also instructed the jury that defendant would not have committed assault with intent to commit murder if the

assault had caused the victim's death and his death was manslaughter, not murder, and instructed the jury as to the elements of voluntary manslaughter. The trial court also instructed the jury as to the lesser included offense of assault with intent to commit great bodily harm less than murder. Despite these instructions, the jury convicted defendant as charged.

Next, defendant argues that his convictions for both assault with intent to commit murder and intentional discharge of a firearm from a motor vehicle violate his constitutional protections against double jeopardy. We disagree. This question was definitively answered in *People v Rivera*, 216 Mich App 648, 651; 550 NW2d 593 (1996), where this Court held that "being convicted of both assault with intent to commit murder and intentional discharge of a firearm from a vehicle with intent to commit harm does not implicate double jeopardy concerns."

We affirm defendant's convictions and sentences. However, we note that although the record reveals that defendant was actually convicted of one count of assault with intent to commit murder, the judgment of sentence indicates that defendant was convicted of three counts of assault with intent to commit murder. Accordingly, we remand for the administrative task of correcting the judgment of sentence to reflect that defendant was convicted of one count of assault with intent to commit murder. The trial court shall ensure that the corrected judgment of sentence is transmitted to the Department of Corrections.

Affirmed and remanded. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald
/s/ Michael R. Smolenski