

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIBREEL KAREEM,

Defendant-Appellant.

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UNPUBLISHED

May 30, 1997

No. 182300

Genesee Circuit Court

LC No. 94-049800

Before: Taylor, P.J., and McDonald and C. J. Sindt\*, JJ.

PER CURIAM.

Following a jury trial, defendant was found guilty of assault with intent to commit murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to a ten to twenty year term of imprisonment on the assault with intent to commit murder conviction and two years for the felony-firearm conviction. Defendant now appeals by leave granted. We affirm in part, reverse in part and remand for further proceedings.

Defendant first contends that the trial court abused its discretion when, over defendant's objections, the court admitted evidence of a shotgun and shotgun shells. We agree.

We review a trial court's decision whether to admit or exclude evidence for an abuse of discretion. *People v McAlister*, 203 Mich App 495; 513 NW2d 431 (1994). An abuse of discretion will be found if, and only if, an unprejudiced person, considering the facts on which the trial court relied, would say there was no excuse or justification for the ruling. *Id.* After a careful review of the record, we conclude that the challenged evidence should not have been admitted. Saxon testified that the shotgun was brought out of Gray's house by a codefendant *after* the shooting at Watkins' home. Further, no spent shotgun shells were found at Watkins' house by the investigating police, and indeed, one of the officers testified that the damage done to the house was inconsistent with damage normally caused by a shotgun blast. Therefore, because the shotgun and shotgun shells were irrelevant to the crimes for which defendant was charged, it was

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\* Circuit judge, sitting on the Court of Appeals by assignment.

error for the trial court to have admitted such evidence. *People v VanderVliet*, 444 Mich 52; 508 NW2d 114 (1993); *People v Williamson*, 205 Mich App 592; 517 NW2d 846 (1994); *People v Minor*, 22 Mich App 673; 177 NW2d 719 (1970). Nevertheless, because we find that there was overwhelming admissible evidence that defendant committed the charged crimes, the trial court's erroneous admission of evidence concerning the shotgun and shotgun shells was harmless. *Williamson*, *supra*.

Defendant next argues that the prosecution failed to present sufficient evidence that defendant possessed the specific intent to kill. Therefore, the evidence did not support defendant's conviction for assault with intent to commit murder. We disagree.

We review a challenge to the sufficiency of the evidence by viewing the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280; 530 NW2d 174 (1995). Here a careful review of the record establishes that there was sufficient evidence presented that defendant possessed the specific intent to kill. There was testimony from Watkin's that the voice she heard on the other side of her door just seconds before the shooting sounded like defendant. There was also testimony from the complainant that defendant had previously accused the complainant of shooting defendant. Additionally, Saxon testified that on the morning of the shooting, defendant stated that he saw the complainant at Watkins' home and that defendant intended to "cap that nigger's ass" for the alleged prior shooting of defendant. Saxon also testified that on the morning of the shooting, she drove defendant, codefendants and another young man to Watkins' home and after the shooting, defendant admitted to having "shot up" the home. Moreover, the complainant testified that he saw defendant wearing a Kangol hat on the morning of the shooting and that testimony was consistent with Tremia's testimony that the person who knocked on Watkins' side door just prior to the shooting was also wearing a Kangol hat. Thus, there was sufficient evidence from which the jury could have reasonably inferred that defendant possessed the specific intent to kill. *People v Lugo*, 214 Mich App 699; 542 NW2d 921 (1995); *People v Daniels*, 172 Mich App 374; 431 NW2d 846 (1988); *People v Bowers*, 136 Mich App 284; 356 NW2d 618 (1984).

Finally, defendant contends that the trial court committed reversible error when it instructed the jury as to the specific intent necessary to convict defendant of the crime of assault with intent to commit murder. We agree.

Because defendant failed to raise the issue in the trial court and did not object to the court's instruction on this basis, we will only review this issue to prevent a miscarriage of justice. *People v Ullah*, 216 Mich App 669; 550 NW2d 568 (1996). Additionally, we review jury instructions in their entirety to determine whether, even if somewhat imperfect, the instructions adequately and fairly presented the issues to the jury and sufficiently protected the defendant's rights. *People v Moldenhauer*, 210 Mich App 158; 533 NW2d 9 (1995); *People v Welford*, 189 Mich App 478; 473 NW2d 767 (1991). Here, the trial court initially instructed the jury that it could find defendant guilty of assault with intent to commit murder if the jury determined that defendant possessed the specific intent to kill. However, in summarizing the elements of that crime, the court instructed the jury that

defendant could be found guilty if he possessed the intent “to do great bodily harm.” Because the trial court’s erroneous instruction pertained to a basic and controlling issue in the case and it is impossible to know whether the jury found defendant guilty of assault with intent to commit murder on the lesser showing of an intent to do great bodily harm, defendant’s conviction must be reversed and the case must be remanded for a new trial on the charge of assault with intent to commit murder. *People v Taylor*, 422 Mich 554; 315 NW2d 1 (1985); *People v Hess*, 214 Mich App 33; 543 NW2d 332 (1995); *People v Chatfield*, 170 Mich App 831; 428 NW2d 788 (1988).

We affirm the conviction for possession of a firearm during the commission of a felony, reverse the conviction of assault with the intent to commit murder, and remand for a new trial. We do not retain jurisdiction.

/s/ Clifford W. Taylor

/s/ Gary R. McDonald

/s/ Conrad J. Sindt