

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ISRAEL HUGHES WILLIAMS,

Defendant-Appellant.

UNPUBLISHED
October 21, 1997

No. 195230
Recorder's Court
LC No. 94-006990

Before: Corrigan, C.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of first-degree murder, MCL 750.316; MSA 28.548, three counts 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). The trial court sentenced defendant to natural life in prison for the first-degree murder conviction, to terms of fifteen to thirty years for each of the three assault convictions, and to the mandatory two-year consecutive term for the felony-firearm conviction. We affirm.

Defendant argues that the trial court abused its discretion when it denied his motion for new trial because the jury's verdict was against the great weight of the evidence. We disagree. We review the trial court's grant or denial of the motion for a new trial for an abuse of discretion. *People v Herbert*, 444 Mich 466, 477; 511 NW2d 654 (1993). An abuse of discretion will be found only where the trial court's denial of the motion was manifestly against the clear weight of the evidence. *People v Harvey*, 167 Mich App 734, 748; 423 NW2d 335 (1988). We give substantial deference to the trial court's determination that a verdict is not against the great weight of the evidence. *Arrington v Detroit Osteopathic Hosp (On Remand)*, 196 Mich App 544, 560; 493 NW2d 492 (1992).

Determining whether a verdict is against the great weight of the evidence requires review of the whole body of proofs. *Herbert, supra* at 475. Defendant argues that the prosecution's witnesses were entirely incredible, and that, therefore, the trial court was required to believe his own witnesses who supported an alibi defense, thus requiring an acquittal. We do not agree. While a trial court may consider the credibility of witnesses when considering whether a verdict is against the great weight of the

evidence, *Herbert, supra* at 477, this Court will not resolve credibility issues anew. *Harvey, supra* at 748. This Court gives deference to the trial court's opportunity to hear the witnesses and its consequent unique qualification to assess credibility. *In re Leone Estate*, 168 Mich App 321, 324; 423 NW2d 652 (1988). Our review of the entire body of proofs in this case indicates that this case was in essence a credibility contest between the witnesses. The prosecutor presented several eyewitnesses who testified that defendant shot at the victims from the backseat of a black truck as his accomplice drove by the victims' house. Defendant presented an alibi defense that he was baby-sitting at the time of the offense. Although defense counsel impeached the prosecution's witnesses with prior inconsistent testimony, the jury found the witnesses' trial testimony to be credible. The trial judge also found the trial testimony credible when he denied defendant's motion for new a trial. We will not substitute our judgment for that of twelve jurors and the trial judge who had a superior opportunity to evaluate the witnesses' credibility. Thus, we conclude that the trial court did not abuse its discretion when it determined that the jury's verdict was not against the great weight of the evidence.

Next, defendant argues that he received ineffective assistance of counsel because his trial counsel failed to request jury instructions on impeachment by prior inconsistent statements and identification. Defendant also argues that even in the absence of a request for these instructions, the trial court should have *sua sponte* given the instructions to the jury. We disagree with both of defendant's arguments. Defendant failed to preserve either of these issues for our review because he did not request an evidentiary hearing or move for a new trial regarding his claim of ineffective assistance of counsel, and defendant did not request at trial the jury instructions he now seeks on appeal. *People v Sharbnow*, 174 Mich App 94, 105-106; 435 NW2d 772 (1989). Failure to object to jury instructions waives error unless relief is necessary to avoid manifest injustice. MCL 768.29; MSA 28.1052, *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995).

In order to prevail on a claim of ineffective assistance of counsel, defendant must show that his trial counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and that he (defendant) was prejudiced by that performance. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994). To show prejudice, the defendant must establish that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Id.* Jury instructions are to be read as a whole rather than extracted piecemeal to establish error. *People Bell*, 209 Mich App 273, 276; 530 NW2d 167 (1995). We conclude from our review of the jury instructions given by the trial court that those instructions adequately covered the issues of identification and impeachment. The trial court told the jury that in evaluating a witness's testimony, it should consider factors which would bear on that witness' perception of the offense, such as whether the witness was able to see or hear clearly, how long the witness was watching or listening, and whether anything else was going on that might have distracted the witness. The trial court told the jury that it should think about which testimony agreed with the other evidence in the case. The trial court also told the jury that it was only permitted to consider the evidence presented in the case and explained what matters fell into the evidentiary category and which matters did not, such as the lawyer's statements. We think that the trial court's instructions sufficiently covered the instructions for identification and impeachment. Therefore, the trial court was not required to *sua sponte* give those instructions as defined by the Michigan Criminal Jury Instructions, Second Edition. For this same reason, we find that

defendant cannot prevail on his claim of ineffective assistance of counsel, because he cannot show that he was prejudiced by counsel's omission of a request for those instructions.

Defendant's final claim of error is that the trial court abused its discretion when it admitted evidence that defendant was involved with a gang. We disagree with defendant and decline to review the issue for the reason that defendant failed to object to the testimony at trial. *People v Grant*, 445 Mich 535, 545, 553; 520 NW2d 123 (1994).

Affirmed.

/s/ Maura D. Corrigan
/s/ Richard Allen Griffin
/s/ Joel P. Hoekstra