STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IMARI KAHSEIMI RHODES,

Defendant-Appellant.

UNPUBLISHED
January 26, 1999

No. 200973
Kent Circuit Court
LC No. 96-006499 FC

Before: Hood, P.J., and Neff and Markey, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), carrying a concealed weapon, MCL 750.227; MSA 28.424, and assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. Defendant was sentenced to concurrent terms of two years for felony-firearm, two to five years for carrying a concealed weapon, and five to ten years for assault with intent to do great bodily harm, to be served consecutively to a two-year term for felony-firearm. Defendant now appeals as of right. We affirm.

I

Defendant first argues that the trial court committed error requiring reversal when it instructed the jury that defendant could be convicted of aiding and abetting an assault with intent to do great bodily harm less than murder if defendant knowingly assisted the principal after the commission of the crime. Jury instructions are to be read as a whole rather than extracted piecemeal to establish error. *People v Bell*, 209 Mich App 273, 276; 530 NW2d 167 (1995). The reviewing court must balance the general tenor of the instructions in their entirety against the potentially misleading effect of a single isolated sentence. *People v Freedland*, 178 Mich App 761, 766; 444 NW2d 250 (1989). Even if the instructions to the jury are imperfect, they do not create error if they fairly presented the issues to be tried and sufficiently protected the defendant's rights. *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994).

The difference between being an aider and abettor and accessory after the fact "depends upon when the defendant's intent was formed and whether the assistance was rendered before, during, or after completion of the crime." *People v Usher*, 196 Mich App 228, 233; 492 NW2d 786 (1992). An aider and abettor "must know about and intend to further the commission of the crime before it is completed and must do some act or give some encouragement that helps in the commission; an accessory after the fact helps the person who committed the crime only after the crime has ended." *Id.* Defendant is correct that it would not be proper for him to be convicted of assault with intent to do great bodily harm if the jury found that defendant was not the principal and that he assisted the shooter only after the shooting. Assault with intent to commit great bodily harm less than murder is a specific intent crime which requires that the defendant specifically intend to do great bodily harm less than murder. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997).

On the issue of aiding and abetting the trial court instructed the jury that "the help that constitutes aiding and abetting can come after the crime, as you and I envision it has occurred, helping someone get away, disposing of the evidence, driving the getaway vehicle, something like that." However, the trial court also went on to specifically instruct the jury that, in order to convict defendant of assault with intent to commit murder or assault with intent to do great bodily harm less than murder, defendant must have intended to kill or do great bodily harm to the victim, stating, "It's not enough that somebody else if there was a somebody else, intended to kill [the victim]. [Defendant] has to have entertained that intent as well."

Viewed in their entirety, the instructions advised the jury of the intent required to find defendant guilty of assault with intent to do great bodily harm less than murder. Therefore, although the trial court's instructions to the jury on the issue of aiding and abetting were somewhat imperfect, the jury instructions, read as a whole, fairly presented the issues to be tried and sufficiently protected defendant's rights.

Moreover, after a careful review of the record, we are satisfied that any error in the trial court's instructions was harmless. MCR 2.613(A), 769.26; MSA 28.1096. Reversal is appropriate only for those errors "that affirmatively appear to undermine the reliability of the verdict. *People v Mateo*, 453 Mich 203, 211; 551 NW2d 891 (1996). In the present case, in light of the overwhelming evidence that defendant was guilty of assault with intent to do great bodily harm as the principal, not an aider and abettor, any error in the trial court's instructions regarding aiding and abetting was harmless and does not warrant reversal of defendant's conviction.

II

Defendant next argues that there was insufficient evidence presented to support his conviction. We disagree. This Court must view 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 Wolfe*, 440 Mich. 508, 515, 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992). Reasonable inferences and circumstantial evidence may constitute satisfactory proof of the elements of the offense. *Id.*

The elements of assault with intent to do great bodily harm less than murder are: "(1) an attempt or offer with force or violence, to do corporal hurt to another, (2) coupled with an intent to do great bodily harm less than murder." *People v Pena*, 224 Mich App 650, 659; 569 NW2d 871 (1997), mod in part on other grounds, 457 Mich 883 (1998). Intent to do great bodily harm less than murder is defined as an intent to do serious injury of an aggravated nature. *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986). The intent necessary to commit this offense may be found in the defendant's conduct or words. *People v Mack*, 112 Mich App 605, 611; 317 NW2d 190 (1981).

Here, the prosecution presented evidence that the victim responded to a knock on his door and, when he opened the door, he could see two men. One of men was wearing something dark. The man not wearing the dark clothes asked the victim if he had any drugs and the victim said that he did not. That man then turned away; however, the one wearing the dark clothes took out a gun and said, "Give it up." The victim slammed his door, locked it, fell to the floor and shots were fired through the door. A police officer heard the gunshots and then saw defendant and a man quickly get into a car and speed away. The man with defendant was wearing a light colored shirt and defendant was wearing a dark jacket. When the officer stopped the car he saw defendant look over his shoulder and toss something to the floorboard of the car behind the driver. When the car stopped defendant ran. When defendant was caught, shortly after having fled, bullets were discovered in his pants pocket. The gun was found in the back seat of the car. During questioning by police, defendant stated that, before he went to the victim's home, he knew that something was going to happen and he knew "it was either going to be a shooting or a robbery."

Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find defendant guilty beyond a reasonable doubt of assault with intent to do great bodily harm less than murder.

Affirmed.

/s/ Harold Hood
/s/ Janet T. Neff
/s/ Jane E. Markey