

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WESLEY EARL SHOCKLEY,

Defendant-Appellant.

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UNPUBLISHED

March 31, 2000

No. 211836

Kent Circuit Court

LC No. 97-009257-FH

Before: Sawyer, P.J., and Gribbs and McDonald, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of fourth-degree fleeing and eluding, MCL 257.602a(2); MSA 9.2302(1)(2), and reckless driving, MCL 257.626; MSA 9.2326. Defendant appeals as of right. We affirm.

Defendant's only argument on appeal is that the trial court erroneously ruled that fleeing and eluding is a general intent crime, which prevented defendant from obtaining an instruction on the defense of voluntary intoxication. We decline to consider defendant's claim because to do so would allow defendant to harbor error as an appellate parachute. *People v Fetterley*, 229 Mich App 511, 520; 583 NW2d 199 (1998). Defense counsel admitted below that he did not object to the trial court's omission of an instruction on voluntary intoxication as a matter of trial strategy. Counsel indicated that he believed he could obtain an acquittal under the trial court's decision that fleeing and eluding is a general intent crime. Defendant may not attempt a new strategy on appeal. Moreover, considering the fact that at trial defendant denied that he was intoxicated, the failure to give the instruction certainly was not a plain error that affected defendant's substantial rights. *People v Carines*, 460 Mich 750; 597 NW2d 130 (1999); *People v Grant*, 445 Mich 535; 520 NW2d 123 (1994).

Our decision should not be interpreted as any comment on whether fleeing and eluding is in fact a general intent crime. We save this issue for another day when it is properly presented to this Court.

Affirmed.

/s/ David H. Sawyer  
/s/ Roman S. Gibbs  
/s/ Gary R. McDonald