

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ABDUL J. KHATTAK,

Defendant-Appellant.

UNPUBLISHED

June 20, 2000

No. 209382

Oakland Circuit Court

LC No. 97-154814-FC

Before: Cavanagh, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Defendant was charged with two counts of first-degree murder, MCL 750.316; MSA 28.548, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), in connection with the shooting deaths of his son-in-law, Amjed Khan, and wife, Ahmedi Khattak. Following a jury trial, defendant was convicted of first-degree murder, second-degree murder, MCL 750.317; MSA 28.549, and two counts of felony-firearm. He was sentenced to concurrent terms of life imprisonment for the first-degree murder conviction and seven to twenty years for the second-degree murder conviction, to be served consecutive to two concurrent two-year terms for the felony-firearm convictions. He appeals as of right. We affirm.

Defendant argues that the trial court erred in failing to sua sponte instruct the jury on the difference between mental illness and insanity. Defendant did not request such an instruction below and did not object to the jury instructions as given.¹ Failure to request an instruction or object to jury instructions at trial waives error unless appellate relief is necessary to avoid manifest injustice. *People v Swint*, 225 Mich App 353, 376; 572 NW2d 666 (1997); *People v Messenger*, 221 Mich App 171, 177; 561 NW2d 463 (1997). Manifest injustice occurs when an erroneous or omitted instruction pertained to a basic and controlling issue in the case. *People v Torres (On Remand)*, 222 Mich App 411, 423; 564 NW2d 149 (1997).

Defendant concedes he did not raise an insanity, diminished capacity or mental illness defense at trial, but argues an instruction regarding the difference between mental illness and insanity was necessary because his trial testimony suggested he did not have the requisite intent to commit the crimes and the trial court's instruction that insanity could not be considered a defense precluded the jury from

considering whether his mental state rendered him incapable of committing the crimes. The record reflects that the jury was properly instructed on the requisite intent necessary to support a conviction for both first- and second-degree murder. Considering the instructions in their entirety, we conclude they fairly presented the issues to be tried and sufficiently protected defendant's rights. *People v Davis*, 216 Mich App 47, 54; 549 NW2d 1 (1996). Under these circumstances, we find no manifest injustice.

Affirmed.

/s/ Mark J. Cavanagh

/s/ David H. Sawyer

/s/ Brian K. Zahra

¹ Although defendant's counsel stated that he objected to the prosecution's proposed instruction that insanity was not raised by defendant and was not asserted as a defense, counsel disapproved of the instruction on the basis that, by referencing the issue of insanity, the instruction may actually encourage the jury to find defendant was insane. Defendant's counsel made clear that self-defense was the only defense he would mention in his closing argument and was the only defense for which instruction was necessary. After the trial court explained it wished to include an instruction that insanity was not asserted as a defense because defendant's testimony suggested he did not know what he was doing at the time of the killings, defendant's counsel conceded the instruction "would be fine."