

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANGUAN MILBURN,

Defendant-Appellant.

---

UNPUBLISHED

February 27, 2001

No. 218902

Wayne Circuit Court

Criminal Division

LC No. 97-003389

Before: Smolenski, P.J., and Jansen and Fitzgerald, JJ.

PER CURIAM.

Defendant was charged with one count of first-degree premeditated murder, MCL 750.316(1)(a); MSA 28.548(1)(a), two counts of assault with intent to commit murder, MCL 750.83; MSA 28.278, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was tried jointly with two other codefendants, before separate juries. Ultimately, the jury acquitted defendant of the first-degree murder and assault with intent to murder charges, but convicted him on the felony-firearm count. The trial court sentenced defendant to a term of two years' imprisonment. He appeals as of right. We affirm.

Defendant's sole argument on appeal concerns the instructions which the trial court read to the jury. Defendant concedes that the trial court's initial jury instructions were correct. However, at the jury's request, the trial court reinstructed regarding the concept of aiding and abetting. Defendant argues that the trial court's reinstruction erroneously allowed the jury to convict defendant of felony-firearm based on a finding that he aided and abetted the simple possession of a firearm, instead of a finding that he aided and abetted the possession of a firearm with knowledge that the person in possession of the firearm intended to commit or attempt to commit a felony.

Because defendant did not preserve this issue with an appropriate objection at trial, we review it only for plain error. *People v McRunels*, 237 Mich App 168, 171-172; 603 NW2d 95 (1999), citing *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). In *Carines*, our Supreme Court stated:

To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3)

and the plain error affected substantial rights. The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings. . . . Finally, once a defendant satisfies these three requirements, an appellate court must exercise its discretion in deciding whether to reverse. Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error “‘seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings’ independent of the defendant’s innocence. [*Carines, supra* at 763 (citations omitted).]

In this case, the record does not establish plain error. Defendant was charged with one count of first-degree premeditated murder, two counts of assault with intent to commit murder, and one count of felony-firearm. The trial court first instructed the jury regarding first-degree murder and the lesser offense of second-degree murder. The court then instructed the jury regarding assault with intent to commit murder and the lesser offense of assault with intent to cause great bodily harm less than murder. Immediately thereafter, the trial court instructed the jury regarding the specific intent required for the murder and assault charges. The Court then instructed the jury that defendant could be convicted on the murder or assault charges either as a direct participant or as an aider and abettor, and explained the concept of aiding and abetting to the jury. The trial court subsequently instructed the jury regarding the elements of a felony-firearm offense and specifically explained to the jury that defendant could be convicted on the felony-firearm charge as an aider and abettor. Defendant concedes that all of these instructions were correct.

On the second day of jury deliberations, the jury asked for reinstructions regarding the concept of aiding and abetting. The jury did not ask for reinstructions regarding the felony-firearm charge and did not ask for reinstructions regarding aiding and abetting felony-firearm. Therefore, the jury’s request for reinstructions regarding aiding and abetting could have related to any of the charged offenses, including the murder and assault charges. The trial court responded to the question by reinstructing the jury regarding the general concept of aiding and abetting. Thus, defendant’s argument that the trial court improperly reinstructed the jury regarding aiding and abetting felony-firearm is flawed. The trial court never reinstructed the jury, properly or improperly, on the elements of aiding and abetting felony-firearm. Rather, the reinstruction regarding the general concept of aiding and abetting was proper and appropriate, given the jury’s request. Because the premise on which defendant bases his argument is not supported by the record, plain error is not apparent.

Furthermore, we note that the general aiding and abetting instruction read by the trial court, even if applied by the jury to the felony-firearm charge, encompassed the elements necessary to find defendant guilty of aiding and abetting felony-firearm. The reinstruction specifically required that the jury find that a crime was committed by some person (i.e., felony-firearm), that defendant assisted in the commission of that crime (i.e., defendant intentionally helped the other person obtain or retain the firearm), and that defendant knew the other person intended to commit the crime (i.e., that defendant knew the person in possession of the firearm intended to possess the weapon during the commission or attempted commission of a crime). The general instruction given could properly relate to the elements of the felony-firearm charge

even though it did not specifically incorporate those elements. Viewing the instructions as a whole, defendant was properly instructed on aiding and abetting in general and on aiding and abetting felony-firearm. Later, it was properly reinstructed on aiding and abetting in general. Accordingly, we conclude that the instructions fairly presented the issues to be tried and sufficiently protected defendant's rights. *People v Bartlett*, 231 Mich App 139, 143-144; 585 NW2d 341 (1998). We find no plain error in this case.

Affirmed.

/s/ Michael R. Smolenski

/s/ Kathleen Jansen

/s/ E. Thomas Fitzgerald