

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEWAYNE WILKERSON,

Defendant-Appellant.

UNPUBLISHED

August 31, 2001

No. 225341

Monroe Circuit Court

LC No. 99-029720-FH

Before: Wilder, P.J., and Hood and Griffin, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for jail escape, MCL 750.197(2). We affirm.

Defendant was an inmate at Monroe County Jail. After he was sentenced on another charge, and was being transported back to jail, defendant broke free from his guard. He jumped up, ran down some stairs, and was running outside the courthouse when he tripped and fell. Officers jumped on him as he tried to get up. He was secured and returned to jail.

Defendant argues that the court erred in failing to give an intent instruction. Failure to object to jury instructions waives error unless relief is necessary to avoid manifest injustice. MCL 768.29, *People v Carines*, 460 Mich 750, 764-765; 597 NW2d 130 (1999). 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).

The validity of the verdict is presumed, and the defendant bears the burden of showing that the error resulted in a miscarriage of justice, in that, after an examination of the entire case, it affirmatively appears that it is more probable than not that the error was outcome determinative. *People v Rodriguez*, 463 Mich 466, 474; 620 NW2d 13 (2000). An error is outcome determinative if it undermined the reliability of the verdict, considering the nature of the error in light of the weight and strength of the untainted evidence. *Id.*

There is no showing that the failure to instruct on general intent was outcome determinative. The offense of prison escape requires an intention to escape from the restraints imposed. *People v Benevides*, 204 Mich App 188, 192; 514 NW2d 208 (1994). Defendant did

not argue that he did not intend to escape, he argued that he did not successfully complete the escape. The evidence was such that the jury would have likely found defendant guilty if an intent instruction were given.

The evidence was sufficient to support the conviction. In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution, and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). The evidence of defendant's actions established that defendant intended to escape.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin