

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DION SAMUEL GOODELL,

Defendant-Appellant.

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UNPUBLISHED

October 5, 2001

No. 223138

Bay Circuit Court

LC No. 99-001112-FH

Before: O'Connell, P.J., and White and Smolenski, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of carrying a firearm with unlawful intent, MCL 750.226, and felony-firearm, MCL 750.227b. Defendant was sentenced to the mandatory two-year term for the felony-firearm conviction, to be served before and consecutive to thirty-six months' probation for the carrying a firearm with unlawful intent conviction. We affirm.

Defendant first argues that there was insufficient evidence to support his conviction of carrying a firearm with unlawful intent because there was no evidence that defendant intended to harm Larry Wade, his girlfriend's neighbor, when he took a rifle to his girlfriend's house; and, because his conviction of carrying a firearm with unlawful intent must be reversed, his conviction of felony-firearm must also be reversed. We disagree.

To determine whether sufficient evidence has been presented to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). Because the standard of review is deferential, this Court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. *Id.*

Defendant's possession of the rifle with the intent to use it unlawfully against another person can be reasonably inferred from the evidence. There was testimony that defendant had an argument with Wade's stepfather and threatened to beat him up. Wade then yelled out the window that if defendant was going to beat someone up, he should start with Wade. The two argued back and forth. Wade then dressed and went downstairs, but defendant left. Defendant returned about fifteen minutes later, and Wade saw him remove a rifle from his trunk and load it. Wade asked defendant what he was going to do with the gun, and defendant replied that he was

going to shoot Wade's kneecaps off. Wade called 911, and defendant placed the rifle back in the trunk. The jury was not obliged to accept defendant's explanation that he took the rifle to his girlfriend's house so she would have it if she needed it for her protection, especially from Wade's dog, and that he intended to install a latch on a closet after dinner, and then tell her about the rifle, and leave the loaded rifle locked in her closet. The jury was free to reject this testimony and conclude, based on the evidence, that defendant carried the rifle with the intent to harm or scare Wade, without regard to any concerns for his girlfriend's safety.

Because we find the evidence supported the underlying felony conviction, we need not address defendant's sufficiency challenge to the felony-firearm conviction.

Defendant next argues that the trial court erred by giving a jury instruction that nullified the defense theory and essentially directed a verdict of guilt. A claim of instructional error is reviewed de novo. *People v Bartlett*, 231 Mich App 139, 143; 585 NW2d 341 (1998). This Court reviews jury instructions in their entirety to determine if the trial court made an error requiring reversal. *People v Caulley*, 197 Mich App 177, 184; 494 NW2d 853 (1992). The instructions must include the elements of the charged offense and must not exclude material issues, defenses, and theories, if there is evidence to support them. *Id.* Even if the instructions are flawed, there is no error if they fairly presented the issues to be tried and sufficiently protected the defendant's rights. *Id.* This Court will not reverse a conviction where the error is harmless, but will reverse where the error is prejudicial. *People v Mateo*, 453 Mich 203, 212, 215; 551 NW2d 891 (1996); MCR 2.613(A); MCL 769.26. The defendant has the burden of establishing that the error requires reversal. See generally, *People v Minor*, 213 Mich App 682, 685; 541 NW2d 576 (1995).

The standard jury instruction, CJI2d 11.17, states:

- (1) The defendant is charged with the crime of being armed with a dangerous weapon with unlawful intent. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (2) First, that the defendant as armed with a \_\_\_\_on or about [date].
- (3) Second, that at the time that [he/she] was armed the defendant intended to use this weapon illegally against someone else.

Defense counsel requested that the third paragraph of the standard jury instruction be modified to include the language "and that he intended to do so without any legal justification, such as acting in self-defense." Defense counsel argued that defendant took the rifle to his girlfriend's with the intent to use it as necessary and lawful, depending on the future circumstances, and that the modified language was appropriate to convey the concept that he would not be guilty if that was his intent. The court acknowledged that the standard instruction was silent regarding what "intending to use this weapon illegally" meant, and resolved potential confusion by instructing the jury that the prosecutor was required to prove that "the defendant at the time he went armed with weapon, intended to either shoot Larry Wade, or he intended to place Larry Wade in fear of being shot." Thus, the court specified the intended unlawful conduct that could support a conviction. Because defendant did not contend that he had one of the specified intents but that

he possessed that intent in self-defense or with some other legal justification, the court declined to modify the instruction as requested by defendant. Additionally, concerned that the jury might speculate as to defendant's future intent, the trial court modified the instruction to make clear that the intent to shoot or place in fear of being shot had to have been possessed at the time defendant went armed with the weapon. We find no error in the court's determination to clarify the unlawful conduct and decline to give defendant's requested modification.

In light of statements of defense counsel and certain evidence regarding Wade's confrontation with a previous neighbor, the prosecutor requested that the court instruct the jury that defendant "is not taking the position that he carried the firearm in the defense of himself or [his girlfriend]; self-defense or the defense of others is not a defense in this case." In response to this request, defense counsel argued that because there was nothing alleged in the case that would give rise to a claim of self-defense, the instruction did not apply and undercut the defense argument as to the real reason why defendant had the rifle. The court modified the requested language to focus on the time defendant went armed, and instructed that jury that "[t]he defendant is not taking the position that he went armed with the firearm in the defense of himself or [his girlfriend]. Self-defense or the defense of others is not a defense in this case." The court concluded that this instruction would clarify that this is not a self-defense case, but it doesn't preclude [defendant's] argument that he had a . . . legitimate intention in mind, not an illegitimate intention in mind in having that . . . rifle at the house."

Viewing the instructions as a whole, the trial court's instructions neither invaded the province of the jury nor left the jury with no other alternative but to convict defendant. *Bartlett, supra* at 155. Defendant never claimed that he was acting in self-defense; rather, he claimed that he brought the rifle to his girlfriend's house to use, if necessary, in the future. The trial court therefore did not err in instructing the jury that defendant was not claiming self-defense. The jury was required to find that defendant went armed with the rifle and at that time he specifically intended to use the weapon illegally against someone else. That is, that at the time he went armed with the weapon, he intended to either shoot Wade or place Wade in fear of being shot. If the jury accepted that he only intended to provide his girlfriend with a rifle to use if necessary and lawful, the jury would not have had a basis to convict under the court's instructions. Thus, we find no basis for reversal.

Affirmed.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Michael R. Smolenski