

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY DEMARCO ROBINSON,

Defendant-Appellant.

UNPUBLISHED

June 4, 2002

No. 226948

Saginaw Circuit Court

LC No. 99-017421-FC

Before: Saad, P.J., and Owens and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions for first-degree premeditated murder, MCL 750.316(1)(a); conspiracy to assault with intent to do great bodily harm less than murder, MCL 750.84; carrying a firearm with unlawful intent, MCL 750.226; intentionally discharging a firearm from a motor vehicle, MCL 750.234a; felon in possession of a firearm, MCL 750.224f; and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to life imprisonment for the murder charge; 95 to 180 months' imprisonment for conspiracy to assault with intent to do great bodily harm less than murder; 47 to 90 months' imprisonment for carrying a firearm with unlawful intent; 36 to 72 months' imprisonment for intentionally discharging a firearm from a motor vehicle; 36 to 90 months' imprisonment for felon is possession of a firearm; and two years' imprisonment for felony-firearm. We affirm.

I. Sufficiency of the Evidence

Defendant argues that there was insufficient evidence to support his first-degree murder conviction. We disagree. In reviewing a sufficiency of the evidence claim, this Court views the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). “[C]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000). Moreover, this Court will not interfere with the jury’s role in determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

To convict defendant of first-degree premeditated murder, the prosecution was required to prove beyond a reasonable doubt that defendant intended to kill the victim and that the killing was premeditated and deliberate. *People v Marsack*, 231 Mich App 364, 370-371; 586 NW2d 234 (1998). However, the jury was also instructed that defendant could be found guilty under an aiding and abetting theory. See MCL 767.39; *People v Coomer*, 245 Mich App 206, 223; 627 NW2d 612 (2001). A conviction for aiding or abetting the commission of a crime requires proof beyond a reasonable doubt that: (1) a crime was committed; (2) defendant performed acts in furtherance of the crime or encouraged its commission; and (3) defendant intended to commit the crime *or* knew that the principal intended its commission at the time defendant provided the encouragement. *People v Turner*, 213 Mich App 558, 568-569; 540 NW2d 728 (1995); see also *People v King*, 210 Mich App 425, 431; 534 NW2d 534 (1995).

The evidence at trial indicated that Quavis McDaniel and defendant shot and killed Steven Johnson during a drive-by shooting. In a statement to police, defendant stated that he arranged to borrow the vehicle that was involved in the shooting. There was also evidence presented that defendant knew McDaniel carried guns and that he had repeatedly threatened retaliation against a south side gang. Defendant picked up McDaniel, who brought two loaded guns into the car, and permitted McDaniel to drive the vehicle. Defendant stated that he accepted one of the loaded guns from McDaniel. Defendant acknowledged that he intended to shoot at someone and that he fired his weapon first. Defendant allegedly stopped firing only after his gun jammed. However, defendant claimed that McDaniel continued to fire at Johnson even after Johnson screamed that he had already been hit. Defendant informed police that McDaniel fired over ten shots at Johnson. Viewing this evidence in the light most favorable to the prosecution, a reasonable juror could conclude that defendant was guilty of first-degree murder either as a principal or under an aiding and abetting theory.

II. Jury Verdicts

Defendant next claims that the jury verdicts are irreconcilable and resulted from impermissible jury compromise or confusion. We disagree. Because defendant failed to preserve this issue, our review is limited to plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Defendant was convicted of first-degree premeditated murder and conspiracy to assault with intent to commit great bodily harm less than murder. From this verdict, it appears that the jury found that defendant and Quavis McDaniel conspired to assault the decedent but not kill him. This finding is ostensibly inconsistent with the jury's further conclusion that defendant either committed or aided and abetted in premeditated murder. However, we note that juries are not precluded from reaching inconsistent verdicts. *People v McKinley*, 168 Mich App 496, 510; 425 NW2d 460 (1988). Nevertheless, "[i]nconsistent verdicts might be cause for reversal when it is evident that the jury was confused, did not understand the instructions, or did not know what it was doing." *Id.*

Contrary to defendant's contentions, there is no indication in the record that the jury reached its conclusion out of compromise or confusion. The fact that the jury asked the trial court about the importance of the victim's identity for purposes of premeditation and specific

intent does not imply that they were confused about the essential elements of first-degree murder. Furthermore, the Michigan Supreme Court has held that:

“Juries are not held to any rules of logic nor are that required to explain their decisions. The ability to convict or acquit another individual is a grave responsibility and an awesome power. . . . [T]he mercy-dispensing power of the jury may serve to release a defendant from some of the consequences of his act without absolving him of all responsibility.” [*People v Goss*, 446 Mich 587, 598, n, 14; 521 NW2d 312 (1994), quoting *People v Vaughn*, 409 Mich 463, 466; 295 NW2d 354 (1980).]

More importantly, defendant has failed to adequately explain how this alleged “confusion” over the importance of whether defendant knew the person he was shooting affected the jury’s ultimate verdict of premeditated murder and conspiracy to do great bodily harm less than murder. We also note that after the verdicts were announced, the jury was polled and each juror affirmed the verdicts against defendant. See *People v Moorer*, 246 Mich App 680, 683, n, 1; 635 NW2d 47 (2001). The trial court specifically instructed the jurors not to compromise their views to reach a verdict. It is well settled that jurors are presumed to follow their instructions. See *id.*; *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

Based on this record, defendant has failed to establish evidence of plain error affecting his substantial rights. *Carines*, *supra* at 763-764.

III. Jury Instructions

Defendant also contends that the trial court improperly instructed the jury. Specifically, defendant argues that the trial court improperly omitted instructions regarding his mere presence at the scene and prior bad acts. Defendant further claims that the trial court erroneously refused to provide the supplemental instructions on first-degree premeditated murder that were requested by the jury. We disagree. It is the function of the trial court to clearly present the case to the jury and instruct them on the applicable law. *People v Katt*, 248 Mich App 282, 310; 639 NW2d 815 (2001).

We review jury instructions in their entirety to determine if error requiring reversal occurred. The instructions must not be “‘extracted piecemeal to establish error.’” Even if the instructions are somewhat imperfect, reversal is not required as long as they fairly presented the issues to be tried and sufficiently protected the defendant’s rights. . . . With regard to unpreserved claims of instructional error, this Court reviews such claims for plain error that affected substantial rights. [*People v Aldrich*, 246 Mich App 101, 124-125; 631 NW2d 67 (2001) (citations omitted).]

Initially, we note that a review of the record reveals that the trial court actually delivered the mere presence instruction—CJI2d 8.5—verbatim. We further find that the trial court instructed the jury that it could only consider defendant’s prior felony conviction as it related to the charge of felon in possession of a firearm. To the extent that defendant argues that there was

other bad acts evidence presented (i.e. gang activity and drug use), he has failed to cite any specific references in the record. See MCR 7.212(C)(7). Furthermore, defendant's trial counsel approved of the instructions given and emphatically opposed providing the jury with supplemental instructions. "A defendant may not waive objection to an issue before the trial court and then raise it as an error before this Court." *People v Fetterley*, 229 Mich App 511, 520; 583 NW2d 199 (1998); see also *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000). We find no error affecting defendant's substantial rights. *Carines*, *supra* at 763-764.

IV. Ineffective Assistance of Counsel

Defendant further maintains that his counsel was ineffective for failing to ensure that the jury was properly instructed. We disagree. Because defendant did not raise this issue before the trial court, this Court's review is limited to errors apparent on the record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). An unpreserved constitutional error warrants reversal only when it is a plain error that affects a defendant's substantial rights. *Carines*, *supra* at 763-764.

Effective assistance of counsel is presumed and defendant bears a heavy burden to prove otherwise. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). To establish ineffective assistance of counsel, defendant must prove: (1) that his counsel's performance was so deficient that he was denied his Sixth Amendment right to counsel and he must overcome the strong presumption that counsel's performance was sound trial strategy; and (2) that this deficient performance prejudiced him to the extent there is a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001).

Defendant specifically questions his trial counsel's resistance to offering supplemental instructions to the jury.¹ However, defendant has not offered any evidence to overcome the strong presumption that defense counsel's conduct was part of sound trial strategy. The trial court provided the jury with the standard jury instruction for first-degree premeditated murder. CJI2d 16.1. Moreover, the trial court's decision to offer a "clarification" of this instruction came nearly three hours after the trial court informed the jury to rely on the instructions as given. Consequently, we find no error.

Affirmed.

/s/ Henry William Saad
/s/ Donald S. Owens
/s/ Jessica R. Cooper

¹ To the extent defendant claims his counsel was ineffective for failing to ensure that the jury was instructed on mere presence and prior bad acts, we find no error.