

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY RUSHING,

Defendant-Appellant.

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UNPUBLISHED

July 9, 2002

No. 231395

Wayne Circuit Court

LC No. 99-008744

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

WHITE, J. (*concurring*).

Taking into consideration the evidence, arguments and instructions, I am satisfied that the asserted errors did not affect the outcome of the trial. At trial, Williams testified that defendant did not participate in the fatal beating and that he was not present when certain events transpired. Williams' prior statement was admissible to impeach this testimony. Another witness, Terry Blakely, testified that when he asked defendant about the victim, defendant said "We f— him up, we stuck a cane up his a-- and he sh-- all over it." Further, there was testimony that defendant participated in the events leading up to, and occurring after, the fatal assault. In light of all the evidence, I am satisfied that the outcome would not have been affected had the jury been instructed that, as to defendant, Williams' statement could be used for impeachment only.

Similarly, through argument of counsel and the jury instructions given, it was made clear to the jury that if defendant did not have the requisite intent, or did not participate in, or aid and abet in causing, the death, he was to be found not guilty. The failure to give the felonious assault instruction did not affect the outcome of the trial. See *People v Cornell*, \_\_ Mich \_\_; \_\_ NW2d \_\_ (Docket No. 115833, issued 6/18/02).

/s/ Helene N. White