

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARLEX DANGELO SHEPARD,

Defendant-Appellant.

UNPUBLISHED
December 6, 2002

No. 235131
Macomb Circuit Court
LC No. 00-001838-FC

Before: Murray, P.J., and Cavanagh and Bandstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts each of assault with a dangerous weapon, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to serve concurrent terms of nine months to four years' imprisonment for the assault with a dangerous weapon convictions, to be preceded by two year terms for his convictions of possession of a firearm during the commission of a felony. Defendant appeals as of right. We affirm.

Defendant argues that the trial court erred by not instructing the jury on the defense of accident, by giving confusing and misleading instructions regarding escape and intent, and by giving unclear subsequent clarifying instructions. We note, however, that defense counsel did not request that an instruction on accident be given, and explicitly expressed satisfaction with the instructions given to the jury, which included the instructions regarding intent and escape, and excluded an accident instruction. Defense counsel also expressly approved the trial court's clarifying instructions given in response to the jury's inquiries. Consequently, defendant has waived the right to assert a claim of instructional error. *People v Carter*, 462 Mich 206, 213-216; 612 NW2d 144 (2000) (one who waives his rights may not seek appellate review of a claimed deprivation of those rights, for his waiver extinguishes any error).

Nonetheless, even if there had been objections, they would have been fruitless. Our review of the challenged instruction of the jury adequately stated the law. As to the instruction on accident that defendant now argues for, had defense counsel requested such an instruction, it would have been denied as unsupported by the evidence. *People v Mills*, 450 Mich 61, 80-81; 537 NW2d 909 (1995). Defendant presented no argument or evidence to establish that his

shooting of the gun was an accident; his defense was, instead, that he had no involvement whatsoever with the shooting.

We affirm.

/s/ Christopher M. Murray

/s/ Mark J. Cavanagh

/s/ Richard A. Bandstra