

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MORRIS ALEX MILLS,

Defendant-Appellant.

UNPUBLISHED

June 12, 2008

No. 277819

Wayne Circuit Court

LC No. 06-014512-01

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

PER CURIAM.

A jury convicted defendant of one count of first-degree murder, MCL 750.316(1)(a), one count of second-degree murder, MCL 750.317, two counts of assault with intent to commit murder, MCL 750.83, one count of felon in possession of a firearm (felon-in-possession), MCL 750.224f, and one count of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced as a fourth habitual offender to concurrent prison terms of life without parole for the first-degree murder conviction, life for the second-degree murder conviction and for one of the assault-with-intent-to-commit-murder convictions, 525 months to 70 years for the other assault-with-intent-to-commit-murder conviction, and 30 to 50 years for the felon-in-possession conviction. He was sentenced to a consecutive prison term of two years for the felony-firearm conviction. Defendant now appeals as of right, and we affirm.

Charles Caldwell and Roger Snyder were killed by gunfire, and Dawn Harriet and Christopher Alford were seriously injured by gunfire, at a known drug house in the city of Detroit. The surviving victims identified defendant as one of two shooters. Defendant was arrested and charged with first-degree murder for the killings of Caldwell and Snyder, assault with intent to commit murder for the shootings of Harriet and Alford, felon in possession of a firearm, and felony-firearm. He was tried before a jury.

After closing arguments, the court instructed the jury on the six charges against defendant. In instructing the jury on the two charges of first-degree murder for the killings of Caldwell and Snyder, and on the lesser-included charges of second-degree murder, the court read the instructions a single time, inserting each victim's name in the alternative, allowing the jury to consider the elements with respect to Caldwell "and/or" Snyder. The court did the same thing when it instructed the jury on the two charges of assault with intent to commit murder for the shootings of Harriet and Alford, and the lesser-included charges of assault with intent to do great

bodily harm, reading the instructions a single time and inserting each surviving victim's name in the alternative. Before it sent the jury to deliberate, the court reiterated "defendant is charged with six offenses." The jury found defendant guilty of one count of first-degree murder for the killing of Snyder, one count of second-degree murder for the killing of Caldwell, and two counts of assault with intent to murder for the shootings of Alford and Harriet.¹

On appeal, defendant argues that he was denied his constitutional right to a fairly instructed jury and a unanimous verdict when the court failed to separately instruct the jury on the murder charges with respect to each decedent and failed to separately instruct the jury on the assault charges with respect to each surviving victim. However, after the court gave the jury its instructions, it asked defense counsel if she was satisfied with the instructions. Counsel stated that she was. Counsel's express approval of the trial court's jury instructions, as opposed to a mere failure to object, constituted a waiver of this issue, which has extinguished any error on appeal. *People v Carter*, 462 Mich 206, 215-220; 612 NW2d 144 (2000).

Defendant also argues that he was denied the effective assistance of counsel when his attorney failed to object to the allegedly improper jury instructions. In order to prevail on a claim of ineffective assistance of counsel, a defendant must show that (1) counsel's performance fell below an objective standard of reasonableness, and (2) but for defense counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001). To establish ineffective assistance of counsel, the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. *People v Matuszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004). The failure to assert a meritless objection does not constitute ineffective assistance of counsel. *Id.*

Defendant contends that by failing to repeat the murder instructions for each of the decedents and the assault instructions for each of the surviving victims, the court permitted the jury to blur the individual nature of the charged offenses, leaving the jury with the option of splitting their votes on the murder and assault charges—in essence, allowing some jurors to find that defendant was guilty of a charge with respect to one victim and allowing other jurors to find that he was guilty of the same charge with respect to a different victim. Defendant asserts that the instructions therefore created a substantial risk of non-unanimous verdicts and lowered the prosecution's burden of proof. Defendant contends that, but for defense counsel's failure to object to the court's instructions, there is a reasonable probability that a different outcome would have resulted.

On appeal, jury instructions are read in their entirety to determine if error occurred that requires reversal. *People v Gaydosh*, 203 Mich App 235, 237; 512 NW2d 65 (1994). Instructions that are imperfect are acceptable if they fairly presented to the jury the issues to be tried and sufficiently protected the rights of the defendant. *People v Clark*, 274 Mich App 248, 255-256; 732 NW2d 605 (2007); *People v Holt*, 207 Mich App 113, 116; 523 NW2d 856 (1994).

The court's instructions to the jury in the instant case, when read in their entirety, fairly presented to the jury the issues to be tried and sufficiently protected the rights of defendant. The

¹ As noted previously, defendant was also convicted of one count of felon-in-possession and one count of felony firearm.

court informed the jury several times that there were six charges against defendant. At the beginning of its instructions, the court stated: “Since the elements for the offenses are the same, even though they apply—each count applies to a different person—I’ll only read them once rather than reading the same thing twice. But understand[that] I’ll be inserting the names in the alternative because they apply to two counts.” When giving the instruction on first-degree murder in the killings of Caldwell and Snyder, the court stated: “The elements for those are the same, so I’ll just read them once. But I’ll put in both names.” When reading the instructions for the lesser-included charges of second-degree murder, the court again stated: “And again the elements are identical. I’ll read them in the same fashion.” The court’s instructions, read in their entirety, reveal that the court adequately informed the jury that the elements of each of the murder and assault charges were to be considered, and found to apply beyond a reasonable doubt, with regard to each individual victim before defendant could be convicted of the respective charge. The fact that the jury concluded that defendant was guilty of first-degree murder in the death of Snyder but guilty of the lesser-included offense of second-degree murder in the death of Caldwell supports the conclusion that the jury was aware that each of the elements of the crimes had to apply to each victim separately. We perceive no error in the specific murder or assault instructions given in this case.

Defense counsel was not required to assert a meritless objection. *Matuszak, supra* at 58. Because defendant cannot show that counsel’s performance fell below an objective standard of reasonableness or that an objection to the instructions would have resulted in a different outcome, defendant has failed to establish ineffective assistance of counsel.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Kathleen Jansen