

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VALISA JONETTE ESCOE,

Defendant-Appellant.

UNPUBLISHED

October 28, 2010

No. 282937

Wayne Circuit Court

LC No. 07-012665-FH

Before: METER, P.J., and MURRAY and BECKERING, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree home invasion, MCL 750.110a(2), and assault with intent to do great bodily harm less than murder, MCL 750.84. She was sentenced to concurrent prison terms of five to 20 years for the home invasion conviction, and five to ten years for the assault conviction. She appeals as of right. We affirm.

In convicting defendant of assault with intent to do great bodily harm, the jury rejected the lesser misdemeanor offenses of aggravated assault, MCL 750.81a(1), and assault and battery, MCL 750.81(1). Defendant's sole claim on appeal is that the trial court erred in failing to instruct the jury on the specific intent necessary to convict on each of the assault offenses. As defendant concedes, she did not request a separate specific intent instruction and did not object to the instructions given, so this issue is not preserved. *People v Gonzalez*, 468 Mich 636, 642; 664 NW2d 159 (2003). Therefore, any relief is precluded unless defendant demonstrates a plain (i.e., clear or obvious) error that affected her substantial rights (i.e., affected the outcome of the lower court proceedings), and this Court determines that the error resulted in the conviction of an innocent person or seriously affected the fairness, integrity or public reputation of judicial proceedings. *Id.* at 642-643; *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

A court must "instruct the jury concerning the law applicable to the case and fully and fairly present the case to the jury in an understandable manner." *People v Mills*, 450 Mich 61, 80; 537 NW2d 909 (1995), mod 450 Mich 1212 (1995). "The instructions must include all elements of the charged offense and must not exclude material issues, defenses, and theories, if there is evidence to support them." *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994). "Even if the instructions are imperfect, there is no error if they fairly presented the issues to be tried and sufficiently protected the defendant's rights." *Id.* However, "[i]t is an error of constitutional magnitude to omit an instruction on an element of a crime." *People v Martin*, 271 Mich App 280, 338; 721 NW2d 815 (2006), aff'd 482 Mich 851 (2008).

Assault with intent to do great bodily harm is a specific intent crime. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997); *People v Mack*, 112 Mich App 605, 611; 317 NW2d 190 (1981). It requires proof that the defendant intended to do great bodily harm, *Parcha*, 227 Mich App at 239, which has been defined as “serious injury of an aggravated nature,” *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986), and as “any physical injury that could seriously harm the health or function of the body.” CJI2d 17.7(4). Aggravated assault is an assault without a weapon that inflicts a serious or aggravated injury upon another, without the intent to murder or do great bodily harm less than murder. *People v Brown*, 97 Mich App 606, 610; 296 NW2d 121 (1980). Both aggravated assault and assault and battery require proof of “the general intent necessary for an assault,” i.e., an intent to injure or to put the victim in reasonable fear or apprehension of an immediate battery. See *People v Joeseype Johnson*, 407 Mich 196, 210, 212; 284 NW2d 718 (1979); CJI2d 17.6(3); CJI2d 17.2(3).

Where the jury instructions include as an element the requisite intent necessary for a given offense, that is sufficient; “further instruction on ‘specific intent,’ such as that found in CJI2d 3.9,” is unnecessary. *People v Maynor*, 470 Mich 289, 296-297; 683 NW2d 565 (2004). In fact, CJI2d 3.9 has been deleted because “the offense instructions each contain any required mens rea element” and further instruction on specific intent would be “redundant at best and potentially confusing at worst.” Former CJI2d 3.9 (Committee Note).

Here, when instructing the jury on the assault offenses, the trial court instructed the jury that the prosecutor had the burden of proving every element of the offenses, including the requisite intent, in accordance with CJI2d 17.7(4), dealing with assault with intent to do great bodily harm less than murder (defendant intended to cause great bodily harm), CJI2d 17.6(3), dealing with aggravated assault (defendant intended to injure the victim or to make her reasonably fear an immediate battery), and CJI2d 17.2(3), dealing with assault in general (defendant intended to commit a battery on the victim or to make her reasonably fear an immediate battery). Defendant has not identified anything inappropriate about the instructions given or indicated what additional instructions should have been given. Accordingly, we find no error.

Affirmed.

/s/ Patrick M. Meter
/s/ Christopher M. Murray
/s/ Jane M. Beckering