

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
June 19, 2012

v

GERALD JEROME EALY,  
Defendant-Appellant.

No. 304330  
Wayne Circuit Court  
LC No. 10-013362-FC

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Before: GLEICHER, P.J., and M. J. KELLY and BOONSTRA, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of assault with intent to murder, MCL 750.83, felon in possession of a firearm (felon-in-possession), MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to 45 to 60 years' imprisonment for his assault with intent to murder and felon-in-possession convictions, and five years' imprisonment for his felony-firearm (second-offense) conviction. Defendant appeals as of right. We affirm.

I. STIPULATION TO FELON-IN-POSSESSION CHARGE

First, defendant argues that the stipulation that he made regarding his felon-in-possession charge was prejudicial, and asks this Court to consider an alternative procedure in handling the charge of felon-in-possession. Defendant further argues that he should have been given the opportunity to make a separate plea or stipulation regarding his felon-in-possession charge outside the presence of the jury.

A defendant may not assign error on appeal to something his counsel deemed proper at trial. *People v Breeding (On Remand)*, 284 Mich App 471, 486; 772 NW2d 810 (2009). Where a defendant does not move to sever the charge of being a felon-in-possession from the other charges against him in the trial court, the defendant has failed to preserve this issue for appeal. *People v Green*, 228 Mich App 684, 691; 580 NW2d 444 (1998). Therefore, we only need to review this issue if necessary to avoid manifest injustice. *Id.* at 661, 562 NW2d 272.

As this Court repeatedly has explained, adequate safeguards can be erected to ensure that a defendant charged with both felon-in-possession and other charges arising from the same incident suffers no unfair prejudice if a single trial is conducted for all the charges. Specifically,

these safeguards are (1) the introduction by stipulation of the fact of the defendant's prior conviction, (2) a limiting instruction emphasizing that the jury must give separate consideration to each count of the indictment, and (3) a specific instruction to consider the prior conviction only as it relates to the felon-in-possession charge. [*Green*, 228 Mich App at 691-692 (internal quotation marks and citations omitted).]

Here, defendant stipulated to the admission of the prosecution's proposed exhibit number seven regarding defendant's felon-in-possession charge. The trial court gave the jurors the instruction that "[e]very crime is made up of parts called elements. And the Prosecutor must prove each element of the crime, beyond a reasonable doubt." The jury was instructed to return a verdict of guilty or not guilty on each offense charged. Although the trial court did not give a specific instruction that the stipulation was to be considered only as it related to his felon-in-possession charge, defendant never requested such an instruction. Furthermore, as in *Green*, defendant was satisfied with the jury instructions, and all parties apparently were satisfied with the resolution of the issue. *Id.* at 691. Therefore, defendant has waived his right to review of this issue on appeal. See *Green*, 228 Mich App at 691-692. To hold otherwise would be to allow an appellant to benefit from an alleged error to which the appellant had contributed by plan or negligence. *People v Witherspoon (After Remand)*, 257 Mich App 329, 333; 670 NW2d 434 (2003). Given the adequate safeguards that were in place at trial, manifest injustice will not result from our failure to review this issue further. See *People v Grant*, 445 Mich 535, 547; 520 NW2d 123 (1994).

## II. JAIL GARB

Next, defendant argues that he was denied his right to due process when the trial court did not permit him to wear civilian clothing, and instead made him wear jail garb, during the first day of his trial. We disagree.

The general rule is that "[a] defendant's timely request to wear civilian clothing must be granted." *Harris*, 201 Mich App at 151. "If the trial court observes the defendant's clothing and finds that it is not prison garb, this Court will review only for abuse of discretion." *People v Harris*, 201 Mich App 147, 151; 505 NW2d 889 (1993) (internal quotation marks omitted). This Court will defer to a trial court's finding that a defendant's clothing did not prejudicially mark the defendant as a prisoner. *Id.* at 152. A defendant ordered to proceed in front of a jury dressed in casual street clothes has not been denied due process. *People v Lewis*, 160 Mich App 20, 30-31; 408 NW2d 94 (1987).

During pretrial the trial court noted the following:

I also want to note that the defendant is dressed in a white tee shirt. If he did want other clothes for his trial, he would need to have his -- someone notified to bring those prior to trial, and the deputies can tell you more in detail about when that can be done, and how that can be done. But the trial may be Monday.

So, if so, if you want to have anything else, you should have it probably brought to the court in the next day or two.

\* \* \*

Brought to the jail, I'm sorry.

On the day of trial, before voir dire of the jury, defendant informed the court that he had a "clothing issue" and that he was wearing "jail garb." The trial court found that defendant was actually wearing a white t-shirt. The trial court further found that it had explained to defendant and his family several times that clothing could be provided for him, and how to arrange the delivery of the clothing.

The trial court found that defendant had on a white t-shirt. This Court defers to the trial court's finding that defendant's clothing was not prison garb and thus did not mark him as a prisoner. See *Harris*, 201 Mich App at 151. Because defendant's casual attire did not deny him due process, we conclude that the trial court did not abuse its discretion in allowing the trial to proceed. *Lewis*, 160 Mich App at 30-31.

### III. SUFFICIENCY OF THE EVIDENCE

Lastly, defendant argues that the prosecution did not present sufficient evidence for a rational jury to convict him of assault with intent to murder. We disagree.

"This Court reviews de novo challenges to the sufficiency of the evidence to determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Lockett*, \_\_ Mich App \_\_; \_\_ NW2d \_\_ (Docket Nos. 296747 and 296848, issued January 10, 2012), slip op at 6 (internal quotation marks and citation omitted). This Court reviews the evidence in the light most favorable to the prosecution. *Id.* Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Minimal circumstantial evidence is sufficient to prove intent. *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). Questions of credibility and intent are best left to the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

"The elements of assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Jackson*, 292 Mich App 583, 588; 808 NW2d 541 (2011) (internal quotation marks and citations omitted). "The intent to kill may be proved by inference from any facts in evidence." *Id.*

On appeal, defendant only challenges the sufficiency of the evidence regarding the second element of assault with intent to murder, i.e., whether he had an actual intent to kill the victim, Marcellus Walker. Walker testified that defendant pulled out a gun in Walker's backyard during an argument the two men were having regarding an electrical wire in Walker's backyard. Walker, Kimberly Adkins, Dezaree Mitchell, Harrison Duncan, and Clarence Wade, all of whom were present at the time of this incident, testified that defendant chased Walker with a gun. Defendant shot at Walker multiple times, landing one shot on Walker's thigh. Defendant said to Walker "I'm a [sic] kill you." Defendant cocked the gun and took a step back. Adkins, who was watching this incident from her truck, which was parked on the grass next to Walker's home,

then yelled, “No.” Defendant turned, with the gun, toward Adkins inside the truck, and then ran off.

Defendant testified that he had wrestled a gun away from someone in Walker’s backyard and began shooting the gun in self-defense, and not with the intent to kill Walker. Defendant argues that even if he brought a gun over to Walker’s backyard, the only inference that can be made is that defendant had the gun for his own protection and not with the intent to kill anyone.

Despite defendant’s contrary arguments, the above evidence enabled a rational jury to infer that defendant intended to kill Walker. It is for the trier of fact, rather than this Court, to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). The evidence offered at trial supported the jury’s verdict that defendant assaulted Walker with intent to murder him.

Affirmed.

/s/ Elizabeth L. Gleicher  
/s/ Michael J. Kelly  
/s/ Mark T. Boonstra