

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FREDERICK SNOWDEN,

Defendant-Appellant.

UNPUBLISHED

March 16, 2001

No. 219276

Wayne Circuit Court

LC No. 98-010434

Before: Hood, P.J., and Doctoroff and K.F. Kelly, JJ.

MEMORANDUM.

A jury convicted defendant of assault with intent to rob while armed, MCL 750.89; MSA 28.284, assault with intent to do great bodily harm less than murder, MCL 750.83; MSA 28.278, and felony-firearm, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to six to thirty years' imprisonment for the assault with intent to rob while armed conviction, five to ten years' imprisonment for the assault with intent to do great bodily harm conviction, and the mandatory two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant contends that the trial court erred by failing to *sua sponte* instruct the jury on the defense of intoxication. We disagree. A party must object or request a given jury instruction to preserve the error for review. MCL 768.29; MSA 28.1052; *People v Sabin (On Second Remand)*, 242 Mich App 656; 620 NW2d 19 (2000). This Court will not review an unpreserved instructional error unless denying review would result in manifest injustice to the defendant. *People v Carines*, 460 Mich 750, 764-765; 597 NW2d 130 (1999). Manifest injustice may occur when an omitted instruction goes to a basic or controlling issue in the case. *People v Torres (On Remand)*, 222 Mich App 411, 423; 564 NW2d 149 (1997).

Defendant argues that "there is no question that there was evidence on the record to support an instruction on intoxication" and that the instruction should have been given because defendant's ability to form the required specific intent was crucial to the case. However, there was no evidence presented at trial that would support the argument that the trial court should have *sua sponte* given an instruction on the defense of intoxication. The only evidence that remotely dealt with the subject of intoxication was the testimony of an emergency room doctor who assisted in caring for defendant. On direct examination by the prosecutor, the doctor

testified that there was no alcohol in defendant's body, but that there were traces of marijuana present. Defendant did not develop the issue of intoxication on cross-examination, nor did he do so throughout the course of trial.

Because the record lacked any meaningful evidence on the issue of intoxication, and because defendant failed to request such an instruction, defendant therefore waived appellate review. The trial court did not err by failing to *sua sponte* give the instruction on intoxication.

Affirmed.

/s/ Harold Hood

/s/ Martin M. Doctoroff

/s/ Kirsten Frank Kelly