

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEONARD CHARLES MCCOY,

Defendant-Appellant.

UNPUBLISHED
November 9, 2004

No. 249194
Wayne Circuit Court
LC No. 03-000599-01

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

MEMORANDUM.

Defendant was charged with twelve counts of assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. Following a jury trial, he was convicted of five counts of assault with intent to do great bodily harm less than murder, MCL 750.84, and felony-firearm. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to prison terms of eight to fifteen years on each of the assault convictions, to be served consecutively to the mandatory two-year term for felony-firearm. Defendant appeals his convictions as of right. We affirm.

Defendant's sole claim on appeal is that the trial court erred in instructing the jury in accordance with CJI2d 17.3 (assault with intent to commit murder), CJI2d 17.7 (assault with intent to do great bodily harm) and CJI2d 17.9 (felonious assault) because while each offense contains as a necessary element that an assault be committed, the instructions are not consistent in defining what constitutes an assault. Because defense counsel answered "No" when asked if there was "anything about the instructions as given to bring to [the court's] attention," the issue has been waived. *People v Tate*, 244 Mich App 553, 559; 624 NW2d 524 (2001).

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski