

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NORMAN DOYLE IRIS

Defendant-Appellant.

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UNPUBLISHED

May 12, 2000

No. 215428

Calhoun Circuit Court

LC No. 98-000780-FH

Before: Owens, P.J., and Murphy and White, JJ.

PER CURIAM.

Defendant appeals of right from his jury conviction of retail fraud in the first degree, MCL 750.356c; MSA 28.588(3), assault with a dangerous weapon (felonious assault), MCL 750.82; MSA 28.277, and third-degree fleeing and eluding police officers, MCL 750.479(a)(3); MSA 28.747(1)(3). Defendant was sentenced to a prison term of 12 to 24 months for retail fraud in the first degree, 24 to 48 months for assault with a dangerous weapon, and 24 to 60 months for fleeing and eluding in the third degree. We affirm.

Defendant contends that the trial court erred when instructing the jury on the felonious assault charge by failing to define “dangerous weapon” and by failing to tell the jury that it had to find that defendant intended to use his car as a dangerous weapon. Specifically, he argues that such failure denied him the right to have the jury determine the existence of all elements of the offense. We disagree.

Defense counsel did not object to the judge’s instructions at trial; therefore, this issue is forfeited unless defendant demonstrates plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). “[A]n error in omitting an element [from criminal instructions] would be an error of constitutional magnitude.” *Id.* at 761, citing *United States v Gaudin*, 515 US 506, 510; 115 S Ct 2310; 132 L Ed 2d 444 (1995). A trial court must instruct the jury concerning the law applicable to the case, and should fully and fairly present the case to the jury in an understandable manner. *People v Daoust*, 228 Mich App 1, 14; 577 NW2d 179 (1998). Jury instructions are reviewed in their entirety to see if they fairly present the issues to be tried and sufficiently protect a defendant’s rights, and, if they do, such instructions do not create error, even if somewhat imperfect. *Id.*

While the judge did not specifically instruct the jury that it had to find that the car was a dangerous weapon and also failed to specify that the jury had to find that defendant intended to use the car as a weapon, the instructions, read as a whole, had the same effect. The judge instructed the jurors that they had to find that defendant intended either to injure the victim or to make the victim reasonably fear an immediate battery, and that defendant did so with an automobile. In order for the jury to find that defendant was guilty under the instructions given, it necessarily found that defendant used the automobile as a dangerous weapon. This Court has previously found that a motor vehicle may be used as a dangerous weapon. *People v Wardlaw*, 190 Mich App 318, 319-320; 475 NW2d 387 (1991); *People v Sheets*, 138 Mich App 794, 799; 360 NW2d 301 (1984). At trial, defendant did not contend that striking a police officer with his car did not constitute use of an automobile as a dangerous weapon, or that the officer was not hit by the vehicle; rather, defendant claimed that he did not intend to strike the officer with his vehicle, but that contact was made because the police officer “wasn’t smart enough to lean back.” The jury rejected defendant’s explanation and thus concluded that defendant intentionally used his automobile to strike the police officer. Because the instructions as a whole fairly presented the issues to be tried and sufficiently protected defendant’s rights, no error occurred. Therefore, this claim of error has been forfeited. *Carines, supra*.

Next, defendant argues that the trial court erred when instructing the jury as to the fleeing and eluding charge by referring to “a police officer” rather than specifically naming the police officers involved. Specifically, he argues that such failure denied him the right to notice, a unanimous verdict, and due process. We disagree.

Defendant failed to object to this issue and so has forfeited it unless he can show a plain error that affected substantial rights. *Carines, supra*. The fleeing and eluding instructions, like the assault instructions discussed above, must be reviewed in their entirety to see if they fairly presented the issues to be tried and sufficiently protected the defendant’s rights. *Daoust, supra*.

Significantly, the court did name police officers Marlow and Tuyls in its instructions to the jury at the beginning of trial.<sup>1</sup> Subsequently, the jurors were instructed to consider all of the instructions together. Then the judge gave the fleeing and eluding instructions out of CJI2d 13.6c, almost verbatim. The judge also instructed the jurors that a “verdict in a criminal case must be unanimous” and that “[i]n order to reach a verdict it is necessary that each of you agree on that verdict.” Defendant nevertheless argues that the preliminary instructions, in which the judge specifically named officers Marlow and Tuyls, and the subsequent instructions, in which the judge used the general term “police officer,” are conflicting. In fact, the instructions, although differing in this one respect, are perfectly consistent.

Furthermore, it is unreasonable to suggest that defendant was not reasonably notified of the charges against him. The information in the fleeing and eluding charge against defendant was accurate and named Officers Marlow and Tuyls specifically. In his closing argument, defendant’s counsel noted to the jury that Officers Marlow and Tuyls, as well as other police officers, allegedly followed defendant as he evasively drove his vehicle. Defendant did not contend that the driver of his car did not attempt to elude the police; rather, defendant claimed that he was not driving the car at that time. Moreover, the right to reasonable notice of charges is a practical one, not a technical one. This Court recently

described the right to notice in *People v Darden*, 230 Mich App 597, 601-602; 585 NW2d 27 (1998):

Contrary to defendant's arguments, the constitutional notice requirement is not some abstract legal technicality requiring reversal in the absence of a perfectly drafted information. Instead, it is a practical requirement that gives effect to a defendant's right to know and respond to the charges against him. Here, defendant does not argue that he was misled regarding the nature or severity of the charges against him; clearly, the information in this case was sufficient to give him notice regarding the events that formed the basis of those charges. [Footnote omitted.]

Taken as a whole, the jury instructions as given by the judge fairly presented the issues and sufficiently protected defendant's rights, *Daoust, supra*, so that any imperfection in them did not constitute plain error. Therefore, this issue has also been forfeited. *Carines, supra*.

Affirmed.

/s/ Donald S. Owens  
/s/ William B. Murphy  
/s/ Helene N. White

<sup>1</sup> The judge, reading Count III to the jurors, explained that the charge was that defendant:

being the driver of a motor vehicle to whom was given a visual or audible signal by hand, voice, emergency light, or siren by Allen Marlow and/or James Tuyls, police officers who were in full uniform, acting in lawful performance of their duty, directing the defendant to bring his motor vehicle to a stop, did willfully fail to obey such direction by attempting to flee or elude the officer, in an area where the speed limit was 35 miles per hour or less. That's commonly known as fleeing a police officer in the third degree.