

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER ALLUNTE LONG,

Defendant-Appellant.

UNPUBLISHED

December 17, 2009

No. 286779

Wayne Circuit Court

LC No. 07-020929

Before: Meter, P.J., and Borrello and Shapiro, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of second-degree murder, MCL 750.317. Defendant was sentenced to 22 ½ to 50 years' imprisonment for the second-degree murder conviction. We affirm defendant's conviction, but remand for resentencing.

Defendant's first issue on appeal is that the trial court's jury instruction on the intent element of second-degree murder was incomplete and confusing to the jury in that the court failed to define "great bodily harm." We disagree.

Because defendant did not request an instruction on the definition of great bodily harm, this issue is not preserved. Accordingly, we review the issue for plain error affecting defendant's substantial rights. *People v Aldrich*, 246 Mich App 101, 125; 631 NW2d 67 (2001). In reviewing jury instructions for error, we review the instructions in their entirety. *Id.* at 124. Even imperfect jury instructions do not create error if they fairly presented the issues to be tried and sufficiently protected the defendant's rights. *People v Clark*, 274 Mich App 248, 257; 732 NW2d 605 (2007).

"[I]nstructions must include all elements of the charged offense and any material issues, defenses, and theories if supported by the evidence." *People v McGhee*, 268 Mich App 600, 606; 709 NW2d 595 (2005). When a word is not defined by statute, this Court will presume that the word is subject to ordinary interpretation and there is no error requiring reversal when the trial court "fails 'to define a term which is generally familiar to lay persons and is susceptible of ordinary comprehension.'" *People v Knapp*, 244 Mich App 361, 376-377; 624 NW2d 227 (2001), quoting *People v Cousins*, 139 Mich App 583, 593; 363 NW2d 285 (1984).

Having reviewed the instructions in their entirety, we conclude that they fairly presented the issues and protected defendant's rights. According the *Random House Webster's College*

Dictionary (2001), the ordinary meaning of “great” is “unusual or considerable in degree, power, intensity,” the word “bodily” is “pertaining to the body,” and word “harm” is “injury or damage; hurt.” Hence, the common meaning of “great bodily harm” is an unusual or considerable degree of injury to the body. Thus, the trial court did not err in failing to provide a definition of “great bodily harm” to the jury. *Knapp, supra* at 377. Because the trial court provided all the elements of second-degree murder to the jury, and the phrase “great bodily harm” is generally familiar to laypersons and it is one of common understanding, defendant has not established plain error affecting his substantial rights. *Aldrich, supra* at 125.

Moreover, it is clear from the record that defendant never disputed whether great bodily harm occurred. Rather, the defense was that defendant did not commit the crime. Thus, the primary issue before the jury was one of identity, not whether the victim suffered great bodily harm. Finally, even if we were to conclude that the failure to provide an instruction defining “great bodily harm” as it has been defined for assault with intent to do great bodily harm was error, we would find the error harmless. *People v Carines*, 460 Mich 750, 763, 766-767; 597 NW2d 130 (1999). The evidence showed that the victim died because a knife was stabbed into the back of his neck. There is no question that this injury is a “serious injury of an aggravated nature,” see *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005), such that the failure to provide such an instruction cannot be said to have “affected the outcome of the lower court proceedings.” *Carines, supra* at 763. Accordingly, there is no plain error. *Id.*

Defendant’s second issue on appeal is that his prior record variable (PRV) 5 was incorrectly scored. The prosecutor concedes that defendant was erroneously given two points under PRV 5 and agrees that the resulting guideline range is 144 to 240 months. Because defendant’s minimum sentence range has changed, he is entitled to resentencing. *People v Francisco*, 474 Mich 82, 88-92; 711 NW2d 44 (2006).

Defendant’s conviction is affirmed, but we remand for resentencing. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Stephen L. Borrello
/s/ Douglas B. Shapiro