

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

UMAR A. MUHAMMAD,

Defendant-Appellant.

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UNPUBLISHED

June 28, 2012

No. 301994

St Clair Circuit Court

LC No. 85-127208-FC

Before: SERVITTO, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals by leave granted<sup>1</sup> from the order of the circuit court denying defendant's motion for relief from judgment. We affirm.

**I. BASIC FACTS AND PROCEDURAL HISTORY**

Defendant has been before this Court many times, beginning first in 1986, which resulted in a published opinion. *People v Muhammad*, 170 Mich App 747; 428 NW2d 762 (1988). Defendant's convictions arose from a bank robbery and shooting that occurred while fleeing a police pursuit. The Court in this first case remanded for a new trial, holding that the trial court abused its discretion by denying defendant's motion to sever trial. *Id.* at 758-759, 766. On retrial in 1989, defendant was convicted of bank robbery, MCL 750.531, assault with intent to do great bodily harm less than murder, MCL 750.84, as a lesser included offense of assault with intent to murder, MCL 750.83, possession of a firearm during the commission of a felony (bank robbery), MCL 750.227b, and possession of a firearm during the commission of a felony (assault), MCL 750.227b. Defendant was sentenced as a habitual offender, fourth offense, MCL 769.12, to life imprisonment for the bank robbery, 50 to 90 years for assault with intent to do great bodily harm, and two years for each of the felony-firearm convictions. Defendant appealed his conviction to this Court, which affirmed, *People v Muhammad*, unpublished opinion per curiam of the Court of Appeals, issued February 17, 1993 (Docket No. 128144), and to our Supreme Court, which denied leave to appeal, *People v Muhammad*, 444 Mich 855 (1993). In

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<sup>1</sup> *People v Muhammad*, unpublished order of the Court of Appeals, entered May 2, 2011 (Docket No. 301994).

1993, defendant filed a motion for a new trial, which was denied, as well as a motion to set aside judgment, which was also denied. In 1994, defendant filed a motion for relief from judgment which was similarly denied.

In 2009, this Court held that a “verdict form was defective, requiring reversal, because it did not give the jury the opportunity to return a general verdict of not guilty.” *People v Wade*, 283 Mich App 462, 468; 771 NW2d 447 (2009). Following the release of *Wade*, defendant filed another motion for relief from judgment with the trial court, asserting that his conviction for assault with intent to do great bodily harm less than murder should be overturned because the jury verdict form used in his case was analogous to the error in *Wade*. The court denied defendant’s motion in a written opinion, finding that “[t]he verdict form in this case is clearly distinguishable from the one used in *Wade*, as a general verdict of not guilty was available for Count II.” Defendant then sought delayed leave to appeal to this Court, which granted defendant leave to appeal.

## II. STANDARD OF REVIEW

We review a trial court’s denial of a defendant’s motion for relief from judgment for an abuse of discretion. *People v Fonville*, 291 Mich App 363, 375-376; 804 NW2d 878 (2011). A lower court’s interpretation of appellate decisions is a question of law we review de novo. *People v Sexton*, 458 Mich 43, 52; 580 NW2d 404 (1998). “The failure of the court to instruct on any point of law shall not be ground for setting aside the verdict of the jury unless such instruction is requested by the accused.” MCL 768.29. The failure to object limits appellate review to plain error affecting the defendant’s substantial rights. *People v Martin*, 271 Mich App 280, 353; 721 NW2d 815 (2006). “Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant’s innocence.” *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999) (citation and quotations omitted). To avoid forfeiture, the defendant bears the burden of establishing that error occurred, the error was plain, and the plain error affected substantial rights. *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003). When a defendant fails to object to the jury instructions or the verdict form, appellate review is precluded absent manifest injustice. *People v Ferguson*, 208 Mich App 508, 510; 528 NW2d 825 (1995).

## III. ANALYSIS

“A criminal defendant is entitled to have a properly instructed jury consider the evidence against him.” *People v Hawthorne*, 474 Mich 174, 182; 713 NW2d 724 (2006), quoting *People v Rodriguez*, 463 Mich 466, 472; 620 NW2d 13 (2000). Additionally, a criminal defendant is deprived of his constitutional right to a jury trial when the jury is not given the opportunity to return a general verdict of not guilty. *People v Clark*, 295 Mich 704, 707; 295 NW 370 (1940); *People v White*, 81 Mich App 335, 339 n 1, 265 NW2d 139 (1978).

In 2009, the *Wade* Court applied these rules to a particular jury verdict form. In *Wade*, one of the counts the defendant was charged with was first-degree murder, with the lesser-included offenses of second-degree murder and involuntary manslaughter. The jury verdict form in that case read as follows, *Wade*, 283 Mich App at 465:

POSSIBLE VERDICTS

YOU MAY RETURN ONLY ONE VERDICT FOR EACH COUNT.

COUNT 1 – HOMICIDE – MURDER FIRST DEGREE – PREMEDITATED  
(EDWARD BROWDER, JR)

\_\_\_ NOT GUILTY

\_\_\_ GUILTY

OR

\_\_\_ GUILTY OF THE LESSER OFFENSE OF – HOMICIDE – MURDER  
SECOND DEGREE (EDWARD BROWDER, JR.)

OR

\_\_\_ GUILTY OF THE LESSER OFFENSE OF – INVOLUNTARY  
MANSLAUGHTER – FIREARM INTENTIONALLY AIMED (EDWARD  
BROWDER, JR.)

COUNT 2 – WEAPONS – FELONY FIREARM

\_\_\_ GUILTY

\_\_\_ NOT GUILTY

Counsel for defendant preserved the issue by objecting to the verdict form, arguing that it did not comply with the standard jury form, but the trial court overruled the objection. *Id.* at 464. After deliberations, the jury returned a verdict of guilty as to the lesser included offense of involuntary manslaughter, but demonstrated some confusion with respect to the form when announcing their verdict. *Id.* at 466-467.

On appeal, this Court found that the form was defective because the not guilty option under Count I appeared to apply only to the charge of first-degree murder, and therefore the form failed to give the jury the option to return a general verdict<sup>2</sup> of not guilty as to first-degree murder and the listed lesser included offenses. *Id.* at 468. The Court noted in dictum that the form could have been cured of this defect by the addition of a general not guilty option, or by the addition of a not guilty option for the lesser included offenses. *Id.*

In the instant case, the jury verdict form used at defendant’s trial read as follows:

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<sup>2</sup> “One of the substantial elements of a constitutional right to trial by jury is the right of the jury, in criminal cases, to give a general verdict on the merits.” *Clark*, 295 Mich at 707.

FORM OF VERDICT

COUNT I:

[ ] We, the jury, find the Defendant, UMAR MUHAMMAD, Not Guilty.

[ ] We, the jury, find the Defendant, UMAR MUHAMMAD, Guilty as Charged of Bank Robbery.

COUNT II:

[ ] We, the jury find the defendant, UMAR MUHAMMAD, Not Guilty.

[ ] We, the jury, find the Defendant, UMAR MUHAMMAD, Guilty as Charged of Assault with Intent to Murder

LESSER INCLUDED OFFENSE:

[ ] We, the jury, find the Defendant, UMAR MUHAMMAD, Guilty of a lesser included offense of Assault with Intent to do Great Bodily Harm Less than the crime of Murder.

[ ] We, the jury, find the Defendant, UMAR MUHAMMAD, Guilty of the lesser included offense of Assault with a Dangerous Weapon.

COUNT III:

[ ] We, the jury, find the Defendant, UMAR MUHAMMAD, Not Guilty.

[ ] We, the jury, find the defendant, UMAR MUHAMMAD, Guilty as Charged of Possession of a Firearm During the Commission of a Bank Robbery.

COUNT IV:

[ ] We, the jury, find the Defendant, UMAR MUHAMMAD, Not Guilty.

[ ] We, the jury, find the Defendant UMAR MUHAMMAD, Guilty as Charged of Possession of a Firearm During the Commission of an Assault.

There are similarities between the form used in *Wade* and the form used at defendant's trial. Both forms, for example, have a count that includes the charged offense and two lesser included offenses, and both forms lack specific "not guilty" options for those lesser included offenses.

However, there are also clear distinctions between the procedural posture of the cases as well as between the form used in *Wade* and the case at bar. In *Wade*, the defense counsel objected to the verdict form's placement of "not guilty" in relationship to the lesser included offenses and the objection was overruled, thereby preserving the issue for appellate review. In the present case, defense counsel did not object on this basis in the lower court, and therefore,

defendant bears the burden of proving plain error affecting substantial rights. *Jones*, 468 Mich at 355.

With regard to the verdict form, in *Wade*, the “NOT GUILTY” box in Count I appears right under the list primary charge (first-degree premeditated murder), which could be understood as referring only to that charge. In the instant case, the header for Count II only identifies the count and does not include a defining complimentary element—the crime charged—as was the case in *Wade*. The distinction is further drawn in presentation of the “Not Guilty” option, which is placed underneath the “Count II” header and makes no reference to the crime charged. In this way, the verdict form informs that the “Not Guilty” option applies to all listed crimes that follow. Moreover, the form is consistent with CJI2d 3.26, the commentary of which makes reference to the requirements of *Wade*.

Additionally, the trial court made it clear during jury instructions that there were four, distinct options under Count II, and that the jury was only to select one of those options. Specifically, the court instructed as follows: “Count two, count two has four options . . . . I want to point out to you that under count two, you have to make one choice, but you have four options to count two.” Therefore, because the jury verdict form in this case gave the jury the option to return a general verdict of not guilty with regard to Count II of the charged offenses, the form was not defective. Moreover, defendant failed to establish plain error. *Jones*, 468 Mich at 355.

Defendant also argued that the merits of his motion for relief from judgment should be heard. However, his motion was both heard and considered below, as well as on appeal. Defendant has received the deliberation he seeks.

Affirmed.

/s/ Deborah A. Servitto  
/s/ Patrick M. Meter  
/s/ Karen M. Fort Hood