

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LISA ANN KELLY,

Defendant-Appellant.

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UNPUBLISHED

September 16, 2008

No. 278370

Kalamazoo Circuit Court

LC No. 06-002107-FH

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial convictions of possession of metallic knuckles, MCL 750.224(1)(d), and carrying a concealed weapon, MCL 750.227(1), for which the trial court sentenced defendant to pay costs, attorney fees, a victim rights assessment, and state fees. Defendant thereafter moved the trial court for a new trial or resentencing. The court waived the costs and attorney fees, but otherwise denied the motions. Because defendant failed to establish instructional error or ineffective assistance of counsel at trial and has not established any basis for appellate relief in her Standard 4 brief, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The prosecutor's theory of the case was that defendant had attempted to carry, concealed in her purse, a combination folding knife and metallic knuckles into court facilities, but that the instrument was discovered by security personnel. At trial, defendant admitted possessing the weapon, but explained that she carried it out of fear of stalking and other threats in her community, even though she did not know how to expose the blade. Defendant further testified that she had been to court many times, and knew that the weapon was not permitted, but this time forgot to leave it elsewhere.

I. Instructional Issues

Appellate counsel argues that the trial court's jury instructions effectively directed the jury to conclude that the instrument in question constituted a set of metallic knuckles, and that it was in fact a dangerous weapon. We read jury instructions in their entirety to determine if there is error requiring reversal. *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994). However, because there was no objection to the court's instructions or comments below, our review is confined ascertaining whether there was plain error affecting defendant's substantial rights.

*People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Under this standard, a reviewing court should reverse only when the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.*

#### A. Metallic Knuckles

The trial court defined “metal knuckles” as “pieces of metal designed to be worn over the knuckles in order to protect them in striking a blow and to make the blow more effective,” and further instructed the jury that the crime of carrying metal knuckles required proof that “the Defendant knowingly possessed the metal knuckles; and . . . , at the time she possessed them . . . she knew that the metal knuckles were a weapon.”

Appellate counsel emphasizes that the defense had maintained that the instrument in question was not a set of metallic knuckles, but rather a folding knife with mere holes in the grip for more secure handling, through which one could not put one’s fingers when the blade was encased, and argues that the instructions disregarded that defense and suggested that the object in question satisfied the definition of “metallic knuckles,” thus removing that element of the crime from the jury’s consideration. The trial court provided the correct definition for “metallic knuckles,” then explained that the crime required the conclusion that defendant “knowingly possessed the metal knuckles” with the understanding that they were a weapon. Implicit in those instructions was that the jury should first determine whether the object in question satisfied the legal definition of metallic knuckles, then, if concluding that it did, decide the possession and knowledge elements. We agree with the trial court’s statement in denying the motion for a new trial, that “it’s hard . . . to contemplate how you would instruct a jury any differently than what the Court did in this case,” given the need to “determine a definition of metallic knuckles and then to apply that definition to the object that would be in front of them.”

#### B. Dangerous Weapon

The trial court defined “dangerous stabbing weapon” for the jury as “any object that is carried as a weapon for bodily assault or defense and that is likely to cause serious physical injury or death when used as a stabbing weapon.” The court further instructed that the crime of carrying a concealed weapon in this instance required proof that defendant “knowingly carried a dangerous stabbing weapon,” that she “must have known that it was a weapon,” and that “[a] dangerous stabbing weapon is any object that is carried as a weapon for bodily assault or defense and that is likely to cause serious physical injury or death when used as a stabbing weapon.” Then, on the subject of allowing the jury to examine the instrument in question, the court stated as follows:

Because of the nature of the exhibit, if you wish to look at it, you should let us know. . . .

\* \* \*

The reason we are having you look at it down here—there are certain things that I do not ever send to a jury room. I never send cash. I never send

drugs and I never send dangerous implements or anything used in such a way. I never send any guns or anything like that up.

Appellate counsel argues that the trial court's statements seemed to equate the object in question with a gun or similarly dangerous implement, thus removing that element from the jury's consideration. The remarks concerning the trial court's reluctance to send certain kinds of items into the jury room were not instructions on the substantive law, but rather concerned courtroom management. We think it unlikely that the jury would have disregarded its duty to determine the question whether defendant's folding knife satisfied the legal definition of a dangerous stabbing weapon simply because the trial court treated it, for purposes of jury deliberations, as it would money, drugs, a gun, or other dangerous implement. Moreover, to the extent that the trial court's comments could have been taken to suggest that the trial court itself regarded the object in question as a dangerous stabbing weapon, any prejudice should have been cured by the trial court's admonishment that the jury decide that case solely on the basis of the evidence, with no deference to any sense of the trial court's own opinions. "It is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich 476, 487; 581 NW2d 229 (1998).

Defendant has failed to establish instructional error on appeal.

## II. Assistance of Counsel

Appellate counsel argues that trial counsel was ineffective for failing to preserve the instructional issues raised and discussed above. "In reviewing a defendant's claim of ineffective assistance of counsel, the reviewing court is to determine (1) whether counsel's performance was objectively unreasonable and (2) whether the defendant was prejudiced by counsel's defective performance." *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). In this case, because appellate counsel has failed to show that there was any error in the instructions as given, no claim of ineffective assistance of counsel can be predicated on the failure to raise objections in the matter. "Trial counsel is not required to advocate a meritless position." *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

## III. Standard 4 Brief

Defendant endeavored to supplement appellate counsel's performance with a brief of her own. However, defendant neither presented discrete issues, nor cited any authority—but for listing several amendments to the United States Constitution in her table of authorities. Instead, defendant submitted something akin to a letter to this Court, offering her reasons for carrying the weapon at issue, and impugning the performance of defense counsel, along with motives of Kalamazoo police and court personnel mostly in connection with matters not before this Court.

Defendant in fact, at trial and on appeal, asserted no legally cognizable privilege for possessing an object that could function as metallic knuckles, or for carrying a concealed weapon. That she had some fears for her safety in her part of the City of Kalamazoo is thus irrelevant, as are the motives of any police or court personnel in connection with matters not germane to this case.

Pleadings offered *in propria persona* should be liberally construed in the interests of justice. See *Estelle v Gamble*, 429 US 97, 106; 97 S Ct 285; 50 L Ed 2d 251 (1976). But also coming to bear is the rule of general applicability that a party's mere assertion that the party's rights were violated, unaccompanied by record citations, cogent argument, or supporting authority, is insufficient to present an issue for consideration by this Court. See *People v Jones (On Rehearing)*, 201 Mich App 449, 456-457; 506 NW2d 542 (1993); MCR 7.212(C)(7). Put another way, "A party may not merely state a position and then leave it to this Court to discover and rationalize the basis for the claim." *People v Mackle*, 241 Mich App 583, 604 n 4; 617 NW2d 339 (2000).

For these reasons, defendant in her Standard 4 brief brings to light no basis for appellate relief.

Affirmed.

/s/ William C. Whitbeck

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio