STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRUCE T. PATTON,

Defendant-Appellant.

UNPUBLISHED
June 3, 1997

No. 193659
Oakland Circuit Court
LC No. 95-142287-FH

Before: Michael J. Kelly, P.J., and Wahls and Gage, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. Defendant pleaded guilty to being an habitual offender, fourth offense, MCL 769.12; MSA 28.1084. Defendant was sentenced to five to ten years' imprisonment for the assault charge. The assault sentence was vacated, and defendant was sentenced to five to twenty years' imprisonment for the habitual offender conviction. Defendant now appeals as of right. We affirm.

First, defendant argues that the evidence presented at trial on the assault charge was not sufficient to support a guilty verdict. We disagree. When determining whether the prosecution has presented sufficient evidence to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Patterson*, 428 Mich 524-525; 410 NW2d 733 (1987). It is unnecessary for the prosecutor to negate every reasonable theory consistent with the defendant's defense. *People v Daniels*, 163 Mich App 703, 707; 415 NW2d 282 (1987). The elements of the crime of assault with intent to do great bodily harm less than murder are (1) an attempt or offer with force or violence to do corporeal hurt to another (an assault), and (2) coupled with an intent to do great bodily harm less than murder. *People v Lugo*, 214 Mich App 699, 710; 542 NW2d 921 (1995). Circumstantial evidence and reasonable inferences therefrom may be sufficient to prove the elements of a crime. *Id*.

The evidence presented at trial demonstrated that defendant got into a brief fight with an acquaintance named Evans. Both men were intoxicated. Within minutes after the fight Evans noticed he was bleeding and knew that he had been cut by something sharp. Evans did not see defendant with a knife during their fight. Police were called, and Evans filed an assault complaint against defendant. Evans received treatment at a hospital for two cuts, one requiring 22 stitches and the other requiring three stitches. Later that evening, defendant was spotted by police carrying a utility knife in his hand. After being arrested on Evans' complaint, defendant told police that he had tried to cut Evans.

Specifically, defendant argues that he was acting in self-defense. Self-defense requires both an honest and reasonable belief that defendant's life was in imminent danger or that there was a threat of serious bodily harm. *People* v *George*, 213 Mich App 632, 634-635; 540 NW2d 487 (1995). We find that there was no evidence that defendant honestly or reasonably believed his life was in imminent danger or that he was threatened by serious bodily harm. Evans testified that he did not threaten defendant in any way during the fight.

Defendant also argues that his capacity to form intent was diminished due to intoxication. The defense of intoxication will negate the specific intent element of the crime charged if the degree of intoxication is so great as to render the accused incapable of entertaining that intent. *People* v *King*, 210 Mich App 425, 428; 534 NW2d 534 (1995). Similarly, there was no evidence that defendant was so intoxicated that he was incapable of forming intent. Defendant admitted to the police officer that he tried to cut defendant. We find sufficient evidence was presented at trial to support a guilty verdict on the assault charge.

Defendant next argues that he was denied effective assistance of counsel because his trial counsel failed to subpoena two witnesses who would have testified that defendant acted in self-defense. We disagree. A defendant who asserts a denial of effective assistance must show that counsel's performance was so deficient that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment, and that the deficient performance prejudiced the defense to the extent that the defendant was deprived of a fair trial with a reliable result. *People v Johnson*, 451 Mich 115, 124; 545 NW2d 637 (1996). The defendant must also overcome the presumption that the challenged action was trial strategy. The decision whether to call witnesses is a matter of trial strategy. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). Defendant himself stated in the presentence investigation report that these two witnesses had left the vicinity before the fight started and therefore would have had no personal knowledge about the fight. We find that defendant was not denied effective assistance of counsel at trial.

Lastly defendant argues that the sentence imposed by the trial court violated the principle of proportionality of *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). In view of defendant's five prior felony and ten prior misdemeanor convictions this issue is frivolous. *cf People v Edgett*, *220* Mich App 686; ___ NW2d ___ (1996).

Affirmed.

/s/ Michael J. Kelly
/s/ Myron H. Wahls
/s/ Hilda R. Gage