STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARSHA JEANNETTA ROSS,

Defendant-Appellant.

UNPUBLISHED
July 18, 1997

No. 182800
Lake Circuit Court
LC No. 94-003035-FC

Before: Doctoroff, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

Following a jury trial, defendant appeals by right from her conviction by jury of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. She was sentenced to four to ten years' imprisonment. We affirm.

Defendant first argues that the trial court abused its discretion in denying her motion for a mistrial following the admission into evidence of a confession she made without the benefit[1] of her *Miranda*[2] warnings. Assuming arguendo that defendant's statement did not fall within the spontaneous exception to *Miranda* discussed in *People v Armendarez*, 188 Mich App 61; 468 NW2d 893 (1988), or the public safety exception adopted in *New York v Quarles*, 467 US 649; 104 S Ct 2626; 81 L Ed 2d 550 (1984), we find no error requiring reversal. Viewing defendant's statement in the context of the entire trial, the error, if any, was harmless beyond a reasonable doubt. *Chapman v California*, 386 US 18; 87 S Ct 824; 17 L Ed 2d 705 (1967); *People v Hall*, 435 Mich 599, 609, n 8; 460 NW2d 520 (1990). Indeed, several eyewitnesses testified that they watched defendant and the victim engage in a midday altercation in a public courthouse. When they were finally separated, the victim was covered in blood, had suffered five stab wounds, and defendant's carving knife was laying on the floor. Because this evidence was, in itself, sufficient to convict defendant of assault with intent to murder, the error, if any, in admitting defendant's statement was not so prejudicial as to warrant a new trial. *People v Gonzalez*, 193 Mich App 263, 266; 483 NW2d 458 (1992). Accordingly, the trial did not abuse its discretion in denying defendant's motion for a mistrial.

Next, defendant argues that the prosecution committed prosecutorial misconduct warranting reversal. We disagree. Reviewing the prosecution's comments in context, we hold that defendant was not denied a fair trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995). First, the

record does not establish that the prosecution's comments regarding defendant's boyfriend constituted a "studied purpose to arouse prejudice in the jury." *Id.* at 271, quoting *Cluett v Rosenthal*, 100 Mich 193; 58 NW 1009 (1894). Second, the prosecutor did not improperly characterize the evidence by stating that defendant was "lying in wait." *Bahoda, supra* at 282. Indeed, there was the testimony that defendant was "fumbling" around in her purse moments before the attack, and that defendant had a knife in her hands when she confronted the victim. Although there may be better words to describe defendant's actions that day than "lying in wait," any argument which drew the inference of preparation was proper. *Id.* Third, defendant claims that the prosecution misstated the evidence by arguing that defendant was restrained while the victim was not. However, defendant did not object to this characterization and any prejudice resulting from the alleged misstatement could have been remedied by a curative instruction. Our failure to review this issue will not result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Finally, there is no suggestion in the record that the prosecution's comments in its opening and closing statements exhorted the jurors to convict for reasons other than the evidence before them. *Bahoda, supra* at 284.

Defendant further contends that the trial court misscored the sentencing guidelines. However, this Court lacks authority to review an error involving sentencing guidelines scoring, and may vacate a sentence only if the factual predicate on which the scoring is based is "wholly unsupported." *People v Mitchell*, 454 Mich 145, 177-178; 560 NW2d 600 (1997). Here, the trial court increased the score for Offense Variable (OV) 2 from twenty-five to fifty points based on the conclusion that, in addition to bodily injury, there was excessive brutality. The court also refused to decrease the score for the psychological impact variable, OV 13, from five to zero points, finding that that the victim had been psychologically injured. The record on appeal factually supports both decisions.

Finally, defendant argues that her sentence is disproportionate. We disagree. Defendant's sentence is within the guidelines and, therefore, presumptively proportionate. *People v Albert*, 207 Mich App 73, 75; 523 NW2d 825 (1994). Given the brutality of the attack and the lack of unusual circumstances, we hold that defendant's sentence is proportionate to the offense and the offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990); *People v Sharp*, 192 Mich App 501, 505; 481 NW2d 773 (1992). Indeed, defendant brutally stabbed a woman in a public building in the middle of the afternoon because of a disagreement over a camera. As the trial court noted, this was a "dramatic stabbing" which "nearly took the life of another human being." Nothing in the record suggests that defendant's sentence was "uncommon, unusual, or rare," nor were there any underlying circumstances. *Id.* at 507-506.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin

[1] The evidence was conflicting whether defendant received *Miranda* warnings before making the statement.

[2] *Miranda v Arizona*, 384 US 486; 86 S Ct 1602; 16 L Ed 2d 694 (1966).