STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIMMY PRINCE CLARK,

Defendant-Appellant.

UNPUBLISHED
April 2, 1999

No. 203330
Wayne County Circuit Court
LC No. 95-007101

Before: McDonald, P.J., and Hood and Doctoroff, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial conviction of assault with intent to commit murder, MCL 750.83; MSA 28.278, for which he was sentenced to fifteen to twenty-five years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant raises arguments challenging the sufficiency of the evidence to sustain his conviction. We review the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994). The prosecution need not negate every reasonable theory of innocence, but must only prove its own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Quinn*, 219 Mich App 571, 574; 557 NW2d 151 (1996).

The elements of the crime of assault with intent to murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory evidence of the elements of the offense. The intent to kill may be proven by inference from any facts in evidence. *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993), lv den 445 Mich 857; 519 NW2d 155 (1994).

We reject defendant's argument that he was too intoxicated to have formed the specific intent necessary for assault with intent to murder. Although the victim testified that she and defendant were

drinking and getting high on crack cocaine "all day" May 3, 1995, she explained that they were not still getting high at the time defendant assaulted the victim, by setting her on fire, in the early morning hours of May 4, 1995, and there is little evidence defendant was substantially incapacitated by intoxicants at that time. Cf. *People v Mills*, 450 Mich 61, 83; 537 NW2d 909, modified, 450 Mich 1212; 539 NW2d 504 (1995). We will not overturn a finding of specific intent on the basis of intoxication in the absence of overwhelming evidence of the requisite level of incapacitation. See *People v Anderson*, 166 Mich App 455, 476-477; 421 NW2d 200 (1988), lv den 432 Mich 858 (1989).

We also reject defendant's contention that the trial court erred in finding specific intent to commit murder because the injury inflicted was not life threatening, and because defendant had the opportunity to further injure the victim after setting her on fire but he assisted her instead. As noted by the trial court, the burn specialist who treated the victim indicated that the victim could have suffered life threatening injuries were it not for the fact that she succeeded in extinguishing the fire by rolling on the floor. Cf. *Mills*, *supra*, 450 Mich at 63-64. Moreover, defendant's statements to the victim, viewed in a light most favorable to the prosecution, provide ample support for a finding of specific intent to kill, notwithstanding defendant's acts of alleged "assistance" after setting the victim on fire.

We are unpersuaded by defendant's argument that the victim was not a credible witness. Challenges to the credibility of a complaining witness rarely, if ever, provide a basis for this Court to find the prosecution's evidence insufficient, since the evidence must be viewed in a light most favorable to the prosecution. See *People v Herbert*, 444 Mich 466, 474; 511 NW2d 654 (1993), overruled on other grounds, *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998); *People v Crump*, 216 Mich App 210, 215-216; 549 NW2d 36 (1996), lv den 454 Mich 877 (1997). Here, we find the alleged contradictions of the victim's testimony by other prosecution witnesses questionable and insignificant at best. We also find no support in the record for defendant's assertion that the trial court failed to give due consideration to lesser included offenses.

Affirmed.

/s/ Gary R. McDonald
/s/ Harold Hood
/s/ Martin M. Doctoroff