

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRAIDON GEORGEES,

Defendant-Appellant.

UNPUBLISHED

July 21, 2000

No. 211261

Macomb Circuit Court

LC No. 97-002588-FC

Before: Hoekstra, P.J., and Cavanagh and White, JJ.

PER CURIAM.

Defendant was convicted by jury of assault with intent to commit murder, MCL 750.83; MSA 28.278, and first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2). Defendant was sentenced to 180 to 360 months' imprisonment for the assault with intent to commit murder conviction, and to 168 to 360 months' imprisonment for the home invasion conviction, to run concurrently. Defendant appeals as of right. We affirm.

Defendant first argues on appeal that the trial court erred in admitting into evidence five photographs of the assault victim's neck and head that were taken at the hospital before and during surgery to repair stab wounds. It is within the sole discretion of the trial court to admit or exclude photographs, *People v Mills*, 450 Mich 61, 76; 537 NW2d 909 (1995), modified on other grounds 450 Mich 1212 (1995), and the trial court's decision will not be disturbed on appeal absent an abuse of discretion, *People v Ho*, 231 Mich App 178, 187; 585 NW2d 357 (1998). "Admission of gruesome photographs solely to arouse the sympathies or prejudices of the jury may be error requiring reversal. However, a photograph that is otherwise admissible for some proper purpose is not rendered inadmissible because of its gruesome details or the shocking nature of the crime." *Ho*, *supra* at 188; *People v Howard*, 226 Mich App 528, 549-550; 575 NW2d 16 (1997). With all photographic evidence, the proper inquiry is whether the probative value of the evidence is substantially outweighed by unfair prejudice. *Mills*, *supra*.

Here, we find that the trial court properly admitted the photographs depicting the severe and thorough slicing of the victim's neck. The photographs were instructive concerning defendant's intent to

commit murder. See *Mills, supra* at 71; *Howard, supra* at 550. Further, the pictures constituted evidence that defendant did not act in self-defense, as he had told the police. See *Howard, supra* at 550-551. Moreover, the fact that the victim's surgeon testified concerning the nature of the wounds does not render the photographs inadmissible; photographs are not excludable simply because a witness can orally testify about the information contained in the photographs, *Mills, supra* at 76; *People v Eddington*, 387 Mich 551, 561-563; 198 NW2d 297 (1972), and photographs may also be used to corroborate a witness' testimony, *Mills, supra* at 76, 80. See also *People v Flowers*, 222 Mich App 732, 736; 565 NW2d 12 (1997). We find no abuse of discretion.

Defendant next contends that insufficient evidence was presented to sustain his convictions. When reviewing a challenge to the sufficiency of the evidence to support a conviction, this Court must examine the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Marsack*, 231 Mich App 364, 370; 586 NW2d 234 (1998).

With regard to his conviction of assault with intent to commit murder, defendant argues that the prosecution failed to present sufficient evidence to support a finding that he intended to kill the victim, and thus his conviction must be reversed. The elements of assault with intent to commit murder include: (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999); MCL 750.83; MSA 28.278. Circumstantial evidence and reasonable inferences arising from the evidence can constitute sufficient proof of the elements of the crime. *McRunels, supra* at 181. The requisite intent to kill may be proven by inference from any facts in evidence. *Id.* Because of the difficulty of proving the state of mind of an actor, minimal circumstantial evidence is sufficient. *Id.*

At trial, the prosecution presented evidence that defendant was "scrunched down" in a closet, holding a knife; that he "darted out" of the closet; and that, without provocation, he stabbed the victim in the neck from behind. Despite the victim's pleas that he stop, defendant continued to stab the victim, who was disabled after recently having undergone surgery on one of his legs. A witness testified that the victim had been cut so severely that "his chest just popped open" and "his spinal cord popped out and you could see where all the skin had left." The victim sustained multiple stab wounds to his chest and extremities and a major laceration to his neck which transected all of the musculature down to the cerebral column. Although there was evidence that defendant told the police that he had acted in self-defense, all conflicts in the evidence must be resolved in favor of the prosecution. *McRunels, supra* at 181. We will not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *Id.* Viewing the evidence in a light most favorable to the prosecution, we conclude that a rational trier of fact could have found that the essential element of intent was proved beyond a reasonable doubt.

Finally, defendant contends that the prosecution failed to present sufficient evidence to support a finding of first-degree home invasion. MCL 750.110a(2); MSA 28.305(a)(2), as in effect at the time of the incident,¹ provides:

A person who breaks and enters a dwelling with intent to commit a felony or a larceny in the dwelling or a person who enters a dwelling without permission with intent to commit a felony or a larceny in the dwelling is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exist [sic]:

(a) The person is armed with a dangerous weapon.

(b) Another person is lawfully present in the dwelling.

Defendant argues that insufficient evidence was presented to establish either that there was a breaking or that he entered the apartment without permission, or to establish that he entered the apartment with the intent to murder.

Here, the prosecution presented evidence that approximately three weeks before the incident defendant took his belongings and moved out of the apartment where he had been living with the tenant and where the incident later occurred. The tenant in the apartment, a friend of the victim, testified that defendant had not been given a key to the apartment, nor permission to have a key made. The tenant had obtained a personal protection order (“PPO”) against defendant when it became clear that defendant was “stalking” her, and the tenant’s brother served defendant with the PPO at the apartment on the day of the incident. The tenant’s brother testified that defendant left the apartment one to two hours before the tenant and her friend (the victim) returned. Moments before discovering that defendant was present in the apartment, the tenant observed that the front door, which she had closed and locked, was ajar. Based on this evidence, the jury was justified in concluding that defendant broke into the apartment by opening the front door, see *People v Toole*, 227 Mich App 656, 659; 576 NW2d 441 (1998) (“[A]ny amount of force used to open a door or window to enter the building, no matter how slight, is sufficient to constitute a breaking.”), or, alternatively, that he entered the apartment without permission, MCL 750.110a(1)(c); MSA 28.305(a)(1)(c) (“‘Without permission’ means without having obtained permission to enter from the owner or lessee of the dwelling or from any other person lawfully in possession or control of the dwelling.”).

Further, the prosecution presented sufficient evidence to establish that defendant entered the apartment with the intent to commit a felony therein. Defendant was discovered hiding in a closet, holding a knife, and he proceeded to brutally attack the victim from behind, causing serious injury. From this evidence, a rational jury could have found that defendant entered the apartment with the intent to commit murder. Thus, viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence to support the jury’s finding of first-degree home invasion.

¹ This statute was amended by PA 1999, No 44, effective October 1, 1999.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Helene N. White