

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JESSE JOSEPH ROUSE,

Defendant-Appellant.

UNPUBLISHED

June 8, 2001

No. 219433

Oakland Circuit Court

LC No. 97-154584-FC

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to commit murder, MCL 750.83; MSA 28.278, and sentenced to life imprisonment as a third habitual offender. MCL 769.11; MSA 28.1083. Defendant appeals as of right. We affirm.

Trial testimony of the victim, a neighbor and police and medical personnel indicated that after beating the victim to the point that she no longer was recognizable to people who knew her, or even as a human being, defendant essentially left her for dead. Defendant used his fists to brutally beat the victim, who, according to an emergency room physician, suffered injuries comparable to “those in people that have been hit by a very blunt object like a baseball bat or something . . . we see . . . in high speed motor vehicle accidents, someone that’s driving . . . at seventy-five and hits a wall, gets thrown up against the windshield.” The victim lost four pints of blood, experienced bleeding in and around her face and within her brain, and sustained numerous facial, tooth and skull fractures. The victim’s eyes were swollen shut and she also had bruises on her arms and legs. The victim’s injuries were life threatening and she spent several days in intensive care in critical condition. She was hospitalized for two weeks and required surgery to reconstruct her face. The victim testified at trial that she continued to suffer headaches, had a problem with her jaw, and that one eye drifted uncontrollably.

Defendant first contends that the trial court abused its discretion in denying his request that the court order the performance of a neurological evaluation and other tests, as suggested by defendant’s independent psychiatric expert the court had appointed pursuant to MCL 768.20a(3); MSA 28.1043(1)(3) to evaluate defendant’s criminal responsibility and competency to stand trial.

Defendant undisputedly was competent to stand trial. Defendant asserted, however, that he suffered from diminished capacity at the time he assaulted the victim, to the extent that he could not form the specific intent required for the assault with intent to commit murder charge.

The defense of diminished capacity falls within the codified definition of legal insanity. *People v Mette*, 243 Mich App 318, 329; 621 NW2d 713 (2000); *People v Mangiapane*, 85 Mich App 379, 390-391, 395; 271 NW2d 240 (1978). The statutory definition of insanity requires the presence of a mental illness preventing the defendant from substantially appreciating the wrongfulness of his conduct or conforming his conduct to the law. MCL 768.21(a)(1); MSA 28.1044(1)(1). Thus, for a diminished capacity defense to exist, the defendant must have a mental illness, as defined by MCL 330.1400(g); MSA 14.800(400)(g),¹ that rendered him unable to formulate the specific intent to commit a crime. *Mette, supra*.

We note that in this case, Dr. Michael Abramsky, defendant's expert, reported that defendant was *not* mentally ill.² Defendant's lack of mental illness means that he could not satisfy MCL 768.21a(1); MSA 28.1044(1)(1)'s definition of legal insanity, and that defendant had no "substantial disorder of thought or mood" that significantly impaired his "judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life." MCL 330.1400(g); MSA 14.800(400)(g). Because defendant's judgment and mental capacity were not significantly impaired, he had the ability to form specific intent. Thus, even assuming that the requested tests would have revealed that defendant had some type of alcohol related organic brain damage, as Dr. Abramsky speculated, this finding would have been irrelevant because the potential defect apparently did not significantly impair defendant's judgment or behavior.

We therefore conclude that the trial court did not err in denying defendant's request for further neurological evaluation and testing. Moreover, even assuming that the trial court should have ordered the tests, defendant has suffered no miscarriage of justice in this case. Even without further neurological testing of defendant, Dr. Abramsky nonetheless testified to his belief that, based on his observations of the symptoms defendant exhibited or reported, defendant likely suffered from organic brain syndrome causing a diminished capacity to formulate specific intent. Dr. George Daigle of the Center for Forensic Psychiatry opined, however, that while defendant experienced mild depression and had prior diagnoses of a personality disorder and alcohol abuse, defendant had no "substantial disorder of thought or mood" and no past diagnoses of "a major mental illness, either mood disturbance or thought disorder nor an organic brain disorder." Dr. Daigle concluded that defendant bore criminal responsibility for the beating. *People v Pickens*, 446 Mich 298, 334; 521 NW2d 797 (1994), citing MCL 769.26; MSA 28.1096.

Defendant next argues that the trial court erred in denying his motion to suppress statements that he made to the police because the statements resulted from police coercion and promises of leniency. Whether a statement is voluntary depends on the totality of the circumstances. *People v Sexton*, 458 Mich 43, 67-68; 580 NW2d 404 (1998); *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). On appeal, we examine the entire record and make an independent determination of voluntariness, but do not disturb the trial court's decision unless

¹ Pursuant to MCL 330.1400(g); MSA 14.800(400)(g), a "mental illness" constitutes a "substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize with reality, or ability to cope with the ordinary demands of life."

² Prosecution rebuttal witness Dr. George Daigle of the Center for Forensic Psychiatry also concluded that defendant did not have a mental illness.

clearly erroneous. *Sexton, supra* at 68. We defer to the trial court's assessments of witness credibility. *Cipriano, supra* at 339. Our de novo review of the totality of circumstances reflected in the instant record convinces us that the trial court correctly determined that the police made no promises of leniency or otherwise coerced defendant's statements. We find that defendant voluntarily made his statements to the police, and that the trial court properly denied defendant's motion to suppress.

Defendant further asserts that insufficient evidence supported his assault with intent to murder conviction or rebutted the substantial evidence of his diminished capacity. After viewing the evidence in the light most favorable to the prosecution, we conclude that the evidence, as summarized by the trial court in its verdict, supported the court's conclusion beyond a reasonable doubt that defendant committed an assault on the victim actually intending to kill her. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985); *People v McRunels*, 237 Mich App 168, 181-182; 603 NW2d 95 (1999). We further agree with the trial court that the evidence of defendant's behavior before, during and after the assault established that rather than suffering from diminished capacity, defendant was capable of forming, and did form, the specific intent to kill the victim. Although the psychological experts disagreed whether defendant suffered diminished capacity at the time of the assault, the trial court apparently rejected Dr. Abramsky's opinion and we will not second guess the court's credibility determination. *McRunels, supra* at 181-182; *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999) ("Questions of credibility are left to the trier of fact and will not be resolved anew by this Court.").

Lastly, defendant claims that his sentence of life imprisonment constituted an abuse of discretion. A sentence constitutes an abuse of discretion when it violates the principle of proportionality, which requires that the sentence be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

In light of (1) the aforementioned facts regarding the gruesome beating that defendant inflicted on the victim and his subsequent callous disregard of the victim, including, as the trial court found, his "action in securing a knife outside the door which led from the living quarters to the rest of the home which effectively prevented the victim from being able to leave or notify others of her need for medical attention," and (2) defendant's criminal history, which included (a) thirteen prior misdemeanors, several of which were assaultive in nature, and (b) two prior felonies, specifically a felonious assault with a knife and second degree criminal sexual conduct involving female acquaintances, we cannot conclude that the trial court's imposition of a life sentence was disproportionate to the instant offense and offender. *Milbourn, supra*. Furthermore, because the instant crime, together with defendant's underlying criminal history, demonstrates his inability to conform his conduct to the law, the trial court's sentence within authorized statutory limits for the crime, MCL 750.83; MSA 28.278, MCL 769.11; MSA 28.1083, is proportionate. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997).

Affirmed.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder