STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK BRADFORD,

Defendant-Appellant.

UNPUBLISHED
November 20, 2001

No. 224790
Oakland Circuit Court
LC No. 99-167462-FC

Before: Zahra, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of assault with intent to commit murder, MCL 750.83. He was sentenced, as an habitual offender, fourth offense, MCL 769.12, to thirty to sixty years' imprisonment. Defendant appeals as of right, and we affirm.

On March 25, 1999, defendant went to the marital home where his estranged wife, the victim, and his children were living. Defendant was admitted to the home by his stepdaughter, Jennifer. Although the screen door of the home was never locked, it was locked after defendant entered the home. Defendant entered the bedroom and spoke with the victim. The victim took her cellular telephone to Jennifer in case something happened. One week prior to this visit by defendant, the victim had told neighbors that she feared that defendant would kill her. The couple spoke for an extensive period of time. Defendant told the victim that he thought about killing her, but it was not "worth it." At approximately 9:30 p.m, defendant telephoned his employer to advise that he would be late for work. Defendant indicated that he wanted to reconcile, but the victim was concerned about prior drug and physical abuse by defendant. At approximately midnight, the victim advised defendant that she needed to sleep. Defendant told the victim that she did not need to sleep and began to choke her. Defendant tried to get the victim to enter the basement, but she refused. The couple struggled, and the victim screamed for help. Jennifer tried to call 911, but found that the two telephones in the home had been disabled. Jennifer was unable to contact 911 with the cellular telephone. Jennifer observed defendant strike the victim in the face.

The victim tried to exit the home, but found that the screen door was locked. The victim was able to unlock the door and jump off the porch. Defendant chased after the victim with a knife. The victim was stabbed in the back. The victim struggled to get the knife from defendant. She was stabbed in the neck on two occasions. The victim managed to get the knife from defendant on two occasions and toss it aside. Each time, defendant retrieved the knife and

attacked the victim. Neighbors observed the stabbing on the front lawn, called 911, and screamed at defendant to leave the victim alone. Neighbor James Waters, jumped off his porch and said, "What in the hell are you doing, Bradford?" Defendant looked and began walking down the street.

The Waters family assisted the victim into their home. There was so much blood that it was difficult to discern where the stabbings wounds were located. The victim told the family to apply pressure to her neck. In addition to the neck and back wounds, the victim suffered numerous cuts to her hands. The victim was taken to the hospital where she was treated by Dr. Kenneth Gibb. Dr. Gibb testified that the neck injuries were life threatening because of the major blood vessels in the neck. However, the back injury was not life threatening because the stabbing had not pierced the victim's lungs. Near the scene, police observed defendant walking. When defendant saw the police, he fled and hid in a field, where he was arrested.

In his opening statement, defense counsel argued that the prosecutor could not establish the element of intent to kill because of defendant's alcohol and drug induced condition. At trial, the victim testified that defendant was "high." When asked to provide a factual support for that conclusion, the victim stated that she "knew" defendant, he had never acted so violently before, and his eyes were red. However, the victim also testified that defendant did not slur his words, did not ramble, and did not stagger. Jennifer testified that she did not smell alcohol on defendant when he arrived at the home. There was no evidence admitted at trial that defendant consumed any alcohol or drugs between the time of his arrival at the home and at the time of the attack. A police officer responsible for defendant's intake, who was trained in signs of alcohol and drug intoxication, did not perceive the conditions that evidence such consumption. Evidence at trial also revealed that defendant normally parked in the driveway or on the street, but during this visit, parked across the street in a plaza parking lot. The prosecution argued that this evidence coupled, with the screen door being locked and the disconnection of the telephones, evidenced the requisite intent and negated the intoxication defense.

Defendant first argues that there was insufficient evidence of the element of intent to support the conviction. We disagree. When reviewing a claim based on sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have concluded that the essential elements of the crime were proved beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). This review is deferential because we draw all reasonable inferences and examine credibility determinations in support of the jury verdict. *Id*. at 400. The elements of assault with intent to commit murder are: (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). In the present case, defendant takes issue only with the intent element of the conviction. However, the question of a defendant's intent presents a question of fact to be inferred from the circumstances by the trier of fact. *People v Tower*, 215 Mich App 318, 322; 544 NW2d 752 (1996). Where there is credible evidence presented that both supports and negates the intent requirement, a factual question exists that is left for resolution by the jury. *People v Neal*, 201 Mich App 650, 655; 506 NW2d 618 (1993). Because of the difficulty of proving a defendant's state of mind, minimal circumstantial evidence is sufficient. *McRunels, supra*.

We conclude that there was sufficient evidence to support the element of intent to kill. While the victim, defendant's wife, testified that he was "high," her conclusion was based on the redness of defendant's eyes and her prior relationship with him. There was no evidence of any drug or alcohol consumption between defendant's arrival at the home and the attack hours later. Other witnesses to defendant's state or condition on the date of the incident contradicted the victim's testimony that defendant was high. There was ample evidence for the jury to reject the intoxication defense. *Nowack, supra*.[1]

Defendant next argues that the trial court erred by increasing the score of three offense variables. We disagree. Review of the record reveals that the scores of these offense variables were supported by evidence at trial. Regarding offense variable three, MCL 777.33, Dr. Gibb did, in fact, testify that the victim's injuries were life threatening because of the blood vessels in the neck. Regarding offense variables seven and ten, respectively MCL 777.37 and MCL 777.40, defendant did not object based on the evidence at trial, but asked the court not to interfere with the probation department's assessment. Review of the record reveals that the trial court's scoring of these variables was supported by the record in light of the extended nature of the attack and the manner in which the attack was achieved. Accordingly, we find no error.

Defendant next argues that his sentence was disproportionate. We disagree. Because the sentence was within the appropriate guidelines sentence range, we affirm the sentence. MCL 769.34(10). Assuming without deciding that the principle of proportionality has survived the enactment of the legislative sentencing guidelines, we would conclude that the sentence was proportionate to the circumstances surrounding the offense and the offender.[2]

Affirmed.

/s/ Brian K. Zahra
/s/ Harold Hood
/s/ William B. Murphy

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[1] Defendant's related argument, that he was "provoked" by the victim and did not an intend murder as opposed to the intent required for manslaughter, is completely without foundation in the record. The victim testified that the couple discussed their relationship for a lengthy period. However, the comment that preceded the attack was the victim's request to go to sleep.

[2] The majority opinion in *People v Babcock*, 244 Mich App 64, 73; 624 NW2d 479 (2000), concluded that appellate review of a sentence within the guidelines, MCL 769.34(10) is precluded. However, the sole issue in *Babcock* was whether the trial court had substantial and compelling reasons to deviate from the guidelines, MCL 769.34(11). Accordingly, this language is dicta. *Cheron, Inc v Don Jones, Inc*, 244 Mich App 212, 216; 625 NW2d 93 (2000); *People v Bowns*, 39 Mich App 424, 426; 197 NW2d 834 (1972).