

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY S. COTTINGHAM,

Defendant-Appellant.

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UNPUBLISHED

November 30, 2001

No. 223444

Wayne Circuit Court

LC No. 98-012812

Before: Owens, P.J., and Holbrook, Jr., and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of assault with intent to commit murder, MCL 750.83. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to life imprisonment. We affirm.

Defendant's conviction stems from a brutal assault that left the victim a partial quadriplegic. Defendant and the victim had previously been involved in a romantic relationship, which ended approximately three months prior to the attack. Evidence adduced at trial established that on September 21, 1998, defendant followed the victim from her place of work. A fellow employee was driving the victim home. Defendant repeatedly attempted to obstruct the victim's vehicle with his own vehicle. As the victim sat parked outside an elementary school, defendant entered the vehicle through the open driver's side window, reached across the passenger compartment, and repeatedly stabbed the victim in her neck, head, face, and chest. The stab wound to the victim's neck was so severe that it severed her spinal cord.

Defendant first contends that the trial court abused its discretion when it denied defendant's motion to appoint substitute counsel. We disagree. This Court reviews a trial court's decision concerning a motion for substitution of counsel for an abuse of discretion. *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991).

Although an indigent defendant is guaranteed the right to counsel, an indigent defendant is not "entitled to have the attorney of his choice appointed simply by requesting that the attorney originally appointed be replaced." *Id.* "Appointment of a substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process. Good cause exists where a legitimate difference of opinion develops between a

defendant and his appointed counsel with regard to a fundamental trial tactic.” *Id.* (citations omitted).

In this case, the record demonstrates that the trial court thoroughly questioned defendant about his concerns with his attorney’s performance and addressed each of these concerns. Moreover, defendant did not request the appointment of a substitute attorney until the first day of trial. Under these facts and circumstances, we are satisfied that the trial court did not abuse its discretion in denying defendant’s request for substitution of counsel. We conclude that defendant did not show adequate cause for the substitution, and that the substitution would have been unreasonably disruptive to the judicial process. *Id.*

Defendant next maintains that his conviction is unsupported by sufficient evidence. Specifically, defendant asserts that insufficient evidence was adduced at trial on the essential element of intent. We disagree. “When reviewing a claim regarding the sufficiency of the evidence, this Court examines the evidence in a light most favorable to the prosecution to determine if a rational jury could find that the essential elements of the offense were proved beyond a reasonable doubt.” *People v Joseph*, 237 Mich App 18, 20; 601 NW2d 882 (1999).

To prove that a defendant committed assault with intent to commit murder, the prosecution must establish, beyond a reasonable doubt, that the defendant acted “with an actual intent to kill.” *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Intent may be inferred from the facts and circumstances of the case. *People v Safiedine*, 163 Mich App 25, 29; 414 NW2d 143 (1987). “Because of the difficulty in proving an actor’s state of mind, minimal circumstantial evidence of intent is sufficient.” *McRunels*, *supra* at 181.

The evidence established that defendant repeatedly stabbed the victim in her neck, head, face, and chest. Expert medical testimony demonstrated that the stab wound to the victim’s neck was so violent that it severed her spinal cord. Following the attack, the victim needed to be on a ventilator for a few weeks because her respiratory muscles were paralyzed. Viewed in the light most favorable to the prosecution, we conclude that a rational trier of fact could conclude from the location and severity of the victim’s wounds that defendant acted with the requisite intent. *Id.* at 181-182. For these same reasons, we also reject defendant’s assertion that the trial court erred in denying his motion for a directed verdict.<sup>1</sup>

Finally, defendant argues that his life sentence is disproportionate. We disagree. We review a trial court’s imposition of sentence on an habitual offender for an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997). A trial court does not abuse its discretion in imposing a sentence within the statutory limits when an

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<sup>1</sup> In reviewing a trial court’s denial of a defendant’s motion for directed verdict of acquittal, we review the record to determine whether the evidence presented by the prosecution up to the time of the motion, viewed in a light most favorable to the prosecution, “could persuade a rational trier of fact that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).

habitual offender's underlying felony and criminal history demonstrate that he is incapable of conforming his behavior to the law. *Id.* at 325-326.

The record indicates that defendant was sentenced within the statutory limits. *Id.* Moreover, in sentencing defendant to life imprisonment, the trial court considered defendant's underlying felony and criminal history, two psychiatric reports that characterized defendant as a volatile and dangerous person who had not learned from his mistakes, and the savage nature of the attack against the victim. Therefore, we conclude that the trial court did not abuse its discretion in sentencing defendant.<sup>2</sup>

Affirmed.

/s/ Donald S. Owens

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Talbot

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<sup>2</sup> Defendant's argument also references the new sentencing guidelines established by our Legislature. However, the new guidelines apply to crimes committed after January 1, 1999. MCL 769.314(1) and (2). Accordingly, the new guidelines have no bearing on this matter.