

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEROME BOWENS,

Defendant-Appellant.

UNPUBLISHED

November 19, 2002

No. 236342

Wayne Circuit Court

LC No. 00-013104

Before: Griffin, P.J., and Gage and Meter, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial conviction for assault with intent to murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

Defendant asserts that there was insufficient evidence to prove that he had the requisite intent to murder where he was intoxicated at the time of the assault. In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution, and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

A defense of intoxication is only proper if the facts of the case could allow the factfinder to conclude that the defendant's intoxication was so great the defendant was unable to form the necessary intent. *People v Mills*, 450 Mich 61, 82-83; 537 NW2d 909 (1995). The appearance of intoxication by itself is insufficient to support the defense. *Id.* No evidence was presented that would show that defendant was too intoxicated to form the necessary intent. The prosecution sustained its burden of proving specific intent.¹

¹ Although not applicable to the present case, we note that 2002 PA 366 now makes voluntary intoxication "an affirmative defense to a specific intent crime, for which the defendant has the burden of proof by a preponderance of the evidence, that he or she voluntarily consumed a legally obtained and properly used medication or other substance and did not know and reasonably should not have known that he or she would become intoxicated or impaired." MCL 768.37.]

Defendant also argues that there was no evidence of serious psychological injury to support the scoring of ten points for OV 4, MCL 777.34. A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score. *People v Leversee*, 243 Mich App 337, 349; 622 NW2d 325 (2000). Scoring decisions for which there is any evidence as support will be upheld on appeal. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). Where the victim was shot seven times at close range, the court could reasonably conclude that he suffered a serious psychological injury requiring professional treatment.

Affirmed.

/s/ Richard Allen Griffin

/s/ Hilda R. Gage

/s/ Patrick M. Meter