

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH L. WATKINS,

Defendant-Appellant.

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UNPUBLISHED

January 27, 2004

No. 243030

Monroe Circuit Court

LC No. 01-031275-FH

Before: Smolenski, P.J., and Saad and Kelly, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to commit murder, MCL 750.83, and unarmed robbery, MCL 750.530. He was sentenced to prison terms of 18 to 30 years and 10 to 15 years, respectively, and now appeals as of right. We affirm.

Defendant argues that the evidence was insufficient to support his conviction for assault with intent to commit murder because the evidence showed that he lacked the necessary specific intent to kill.<sup>1</sup> In reviewing the sufficiency of the evidence, this Court must view the evidence de novo in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). However, this Court should not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 478, amended 441 Mich 1201 (1992). Additionally, it is for the trier of fact rather than this Court to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

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<sup>1</sup> Although defendant framed this issue in his statement of questions presented as a conviction "against the great weight of the evidence," defendant's argument actually involves the sufficiency of the evidence. However, we note that even under the "against the great weight of the evidence" standard, we would find that the trial court did not clearly err in concluding that defendant possessed the necessary intent to kill.

The intent to kill may be inferred from any facts in evidence, *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997), and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient, *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984). Here, the injuries the victim sustained from the brutal assault were substantial: an eye socket fracture, both eyes were swollen shut, two displaced fractures of the jaw, a bruised kidney, a laceration over her left eyebrow requiring stitches, a "goose egg" on her head, two rib fractures, compression of lung tissue which is a reaction to an injury, bruises on her left arm (characterized as grab marks) and right side (in the shape of a footprint), and a concussion. The victim's jaw was sufficiently damaged that she was intubated in order to help her breathe and had reconstructive surgery to repair the damage. Permanent plates were put in her jaw and it was wired shut to allow the jaw to heal. At the time of the trial, over one year after the assault, the victim still had to undergo yet another surgery to repair her left jaw. Based on the extent of the victim's injuries alone, a reasonable jury could find that defendant intended to kill the victim, particularly with the majority of the assault being aimed at her head.

But defendant contends that he was so intoxicated that he lacked the ability to form the specific intent to kill. We find that the evidence belies defendant's contention. Shortly before the assault, defendant's faculties were sufficient to enable him to drive a car to the victim's home. During the assault, defendant thrice walked away from the victim after assaulting her, only to return and continue the assault. Immediately after the assault, when stopped by the police, defendant had the sense of mind to lie about the reason for his presence at the victim's trailer park and give the officer a false name and identification card. And this officer testified that defendant did not smell of alcohol, nor did he exhibit any of the usual signs of intoxication. Otherwise, presumably, the officer would not have allowed defendant to leave the scene driving his car. Additionally, two of the prosecution's expert witnesses testified that defendant could form a specific intent even if he could not remember the events. Therefore, viewing the evidence in the light most favorable to the prosecution, we find that a reasonable jury could determine beyond a reasonable doubt that defendant intended to kill the victim.

Defendant also asserts that the trial court erred in admitting evidence of his prior bad acts under MRE 404(b). The admissibility of bad acts evidence is within the trial court's discretion and will be reversed on appeal only when there has been a clear abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). An abuse of discretion exists only when an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling made. *People v Rice (On Remand)*, 235 Mich App 429, 439; 597 NW2d 843 (1999). A decision on a close evidentiary question ordinarily cannot be an abuse of discretion. *People v Sabin (After Remand)*, 463 Mich 43, 67; 614 NW2d 888 (2000).

Prior bad acts are inadmissible to prove that a defendant acted in conformity with that behavior, but are admissible for other purposes such as to show motive or intent. MRE 404(b). In this case, the prosecutor properly filed its notice of intent to introduce prior acts evidence to show motive and intent. Defendant and the victim had an on-again/off-again relationship. At trial, the victim testified, over defendant's objection, as to three specific instances of defendant's prior behavior towards her.

On appeal, plaintiff argues that the evidence was properly admitted to show that defendant's motive was jealousy and that he intended to kill the victim so no one else could have

her. Defendant, on the other hand, extensively recites the applicable law, but presents absolutely no argument to support his assertion that the evidence is simply propensity evidence. “It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments . . . .” *Mudge v Macomb Co*, 458 Mich App 87, 105; 580 NW2d 845 (1998). Therefore, we need not address the merits of this issue.

Moreover, even if we were to find that the trial court erred in admitting this evidence, the error was harmless given the overwhelming evidence of defendant’s guilt. *People v Williamson*, 205 Mich App 592, 596; 517 NW2d 846 (1994). 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 Abraham*, 234 Mich App 640, 657; 599 NW2d 736 (1999). It was undisputed that the victim was viciously assaulted. And there was substantial evidence to establish that defendant was the person who assaulted her. Two eyewitnesses observed defendant assault the victim for ten to fifteen minutes, defendant was at the victim’s trailer park when the police arrived after one eyewitness called 911, the police officer indicated that defendant had blood on his sweatshirt, his blood was found on the sidewalk near the victim, and when his girlfriend saw him a few hours later his hands were bandaged.

As evidence of defendant’s intent to kill, there was the victim’s significant injuries which were sustained mainly in her head and upper torso regions. These injuries resulted from defendant, who was a significantly larger person than the victim, repeatedly, and with apparent great force, kicking and stomping on the victim. Also, the evidence indicated that defendant thrice walked away from the victim, appeared to think for a moment, only to return and continue the attack. Furthermore, defendant was heard yelling profane epithets at the victim as he assaulted her. After defendant pulled the victim by her hair through the porch railing, he left her lying in the grass, barely conscious and bleeding profusely. Had the victim died as a result of this assault, it is clear that the charge would have been murder. Without a motive it may be more difficult to understand defendant’s actions, but motive is not an element of the charged offense and did not need to be proven. Therefore, we hold that defendant is not entitled to the relief he seeks, a new trial.

Affirmed.

/s/ Michael R. Smolenski  
/s/ Henry William Saad  
/s/ Kirsten Frank Kelly