

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDY LEO GROSS,

Defendant-Appellant.

UNPUBLISHED

October 7, 2004

No. 247858

Midland Circuit Court

LC No. 02-001329-FH

Before: Griffin, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from a non-jury conviction of assault with intent to do great bodily harm less than murder, MCL 750.84, for which he was sentenced as a third habitual offender, MCL 769.11, to 85 to 240 months in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arose when defendant inflicted a severe beating on the victim in her home. Defendant resided in the home with the victim and admitted that he committed the offense. He admitted that he grabbed the victim's head and slammed it into a kitchen cabinet. Then he pushed her to the floor and pummeled her in the face with his fists. In addition to small cuts and bruises, the victim lost three teeth. The beating was so severe that the victim's mental faculties were severely impaired for a time, and her doctor attributed the problem to a brain contusion.

Defendant first contends that the trial court erred in admitting his confession because it was not voluntarily made. We disagree. We defer to the trial court's resolution of factual issues, especially those involving the credibility of witnesses whose testimony conflicts. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997). "The burden is on the prosecution to prove voluntariness by a preponderance of the evidence." *People v Akins*, 259 Mich App 545, 564; 675 NW2d 863 (2003). The test of voluntariness is whether, under the totality of the circumstances, the statement was the result of free choice or overborne will. *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988).

In determining whether a statement is voluntary, the trial court should consider, among other things, the following factors: the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack

of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. [*Id.* at 334.]

The evidence showed that defendant was forty-four years old and had some college education. He had two prior convictions and was familiar with his rights from being questioned by police in one of those cases. Defendant ultimately confessed after five and a half hours at the police station. However, the administration of a polygraph examination took up the first three and a half hours. Defendant had voluntarily consented to the examination and acknowledged that he was free to leave at any time. Although a formal advice of rights was not required because defendant was not in custody, defendant was advised of and waived his rights twice that day, once before taking the polygraph test and once before giving the taped statement. Delay of arraignment was not a factor because defendant had not been arrested. There was no evidence that defendant was injured, intoxicated or drugged, in ill health, or deprived of food, sleep or medical attention. There was no evidence that he was threatened with or subjected to physical abuse. While defendant argued that officers threatened that he would go to prison, these “threats” were premised on a court finding him guilty of the crime, not on his statements. Based on the record presented, the trial court did not clearly err in finding that defendant’s confession was voluntary and admissible at trial.

Defendant next contends that the evidence was insufficient to sustain the verdict. We disagree. A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). We review the evidence in a light most favorable to the prosecution and then determine whether a rational trier of fact could find that each element of the crime was proven beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001).

The prosecutor presented evidence that defendant brutally assaulted the victim, with whom he lived, and later confessed to the crime. The fact that defendant slammed the victim’s head into a cabinet and then proceeded to punch her repeatedly with his fists suffices to demonstrate that defendant intended to cause the victim great bodily harm.

Affirmed.

/s/ Richard Allen Griffin
/s/ Henry William Saad
/s/ Peter D. O’Connell