

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY PAUL BUSS,

Defendant-Appellant.

UNPUBLISHED

September 16, 2008

No. 278279

Oakland Circuit Court

LC No. 2006-208894-FC

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of assault with intent to commit murder, MCL 750.83, nine counts of assault with intent to do great bodily harm less than murder, MCL 750.84, failure to stop at the scene of an accident resulting in serious injury, MCL 257.617, and malicious destruction of property, MCL 750.377. He was sentenced to concurrent prison terms of four to six years for each assault with intent to do great bodily harm conviction, 135 months to 40 years for each assault with intent to commit murder conviction, and two to five years each for the failure to stop and malicious destruction of property convictions. He appeals as of right. We affirm.

I. Basic Facts

Defendant's convictions arise from allegations that he intentionally drove through a carnival, assaulted several people, destroyed property, and fled the scene. On the afternoon of May 21, 2006, the Armenian Church and Cultural Center, which includes a school, held their annual carnival on their property in Southfield. The school principal testified that he saw the driver of a minivan attempt to make a 90-degree turn and hit the guardrail protecting the school. An expert in accident reconstruction testified that defendant was traveling 56 miles an hour before hitting the guardrail. The principal testified that after the rear of defendant's van hit the guardrail, defendant continued moving toward the school grounds instead of leaving the premises. The principal tapped on defendant's passenger side window, but defendant looked straight ahead and did not respond. The principal yelled defendant's license number and directed nearby children to call 911.

Several witnesses testified that five to seven men surrounded defendant's van, yelled, and pleaded with him to stop or drive away from the carnival via a safe path. The van eventually stopped on the grass approximately 100 feet from several inflatable rides. The children in the

area were moved and a path was formed for defendant to safely leave the premises. Defendant did not take the path. Instead, defendant gunned his engine, inched forward about four or five times, veered toward the crowd, and then accelerated as he drove through the crowd. A carnival employee jumped on the hood of defendant's van in an attempt to stop him, but immediately jumped down when defendant accelerated. A parent punched out the driver's side window and attempted to steer the vehicle or remove the keys from the ignition. Witnesses testified that defendant was steering the wheel and had complete control of the van. As defendant drove through the crowd, he hit at least nine people and damaged the inflatable rides. Seven of the individuals who were injured suffered bruises and scrapes, one suffered two broken ankles, and one suffered a crushed pelvis and broken tailbone. After driving through the carnival, defendant fled the scene. He was later arrested at his home after the police tracked his license plate number.

The defense denied that defendant intended to harm anyone or damage any property, and claimed he was merely attempting to leave the premises in the midst of a loud and aggressive crowd. The defense presented three witnesses, who all testified that defendant was a peaceful person.

II. Sufficiency of the Evidence

Defendant argues that the evidence was insufficient to sustain his two convictions of assault with intent to commit murder. We disagree. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution 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 Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses. *Id.* at 514. Rather, "a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

To sustain a conviction for assault with intent to commit murder, the prosecution must establish beyond a reasonable doubt that the defendant committed "(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); see also MCL 750.83.

Defendant only challenges the intent to kill element. An intent to kill may be inferred from facts in evidence, including the use of a dangerous weapon. See *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999), and *People v Ray*, 56 Mich App 610, 615; 224 NW2d 735 (1974). An automobile may be a dangerous weapon if used in furtherance of accomplishing an assault and if capable of inflicting serious injury. *People v Sheets*, 138 Mich App 794, 799; 360 NW2d 301 (1984). Because an actor's state of mind is difficult to prove, only minimal circumstantial evidence is required. See *McRunels*, *supra*; *Ray*, *supra*.

Defendant's assault with intent to commit murder convictions arise from his assault of Sona Manzo and her three-year-old son. Evidence was presented that defendant drove a van through a crowd of people. Five to seven men attempted to stop him, guide him away from the crowd, and direct him off premises via a safe path. Defendant did not take the path, ignored

pleas to stop, gunned his engine, lurched forward, and accelerated into the crowd. There was evidence that defendant had complete control of the vehicle. Defendant hit at least eight people and some of the inflatable rides *before* running over Manzo, who was holding her young son. The wheels barely missed the toddler because of how Manzo was holding him. As a result of defendant's actions, Manzo suffered a crushed pelvis and broken tailbone. After hitting Manzo, defendant did not stop, but fled the scene. This evidence, viewed in a light most favorable to the prosecution, was sufficient to enable a rational trier of fact to infer that defendant committed the assaults with an actual intent to kill. While the defense argued that defendant intended only to leave the premises, the question of defendant's intent was a matter for the trier of fact to resolve. *People v Osantowski*, 274 Mich App 593, 613; 736 NW2d 289 (2007), rev'd in part on other grounds 481 Mich 103 (2008). The evidence was sufficient to sustain defendant's convictions of assault with intent to commit murder.

III. Jury Instructions

Defendant further argues that the trial court erred by denying his request to instruct the jury on the defense of duress. The trial court's determination whether a requested jury instruction is applicable to the facts of a case is reviewed for an abuse of discretion. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006).

Duress is an affirmative defense that is applicable in situations where the defendant commits a crime to avoid a greater harm. *People v Lemons*, 454 Mich 234, 245-246; 562 NW2d 447 (1997). The defendant must present a prima facie case of the elements of the defense. *Id.* at 246. The defendant must show that: (1) the threatening conduct was sufficient to create in the mind of a reasonable person the fear of death or serious bodily harm; (2) the conduct in fact caused such fear of death or serious bodily harm in the mind of the defendant; (3) the fear or duress was operating on the mind of the defendant at the time of the alleged act; and (4) the defendant committed the act to avoid the threatened harm. *Id.* at 247. The threat must have arisen without the negligence or fault of the defendant. *Id.* If the defendant does not submit sufficient evidence to warrant a finding of duress, the trial court is not required to instruct the jury on the defense. *Id.* at 248.

Defendant claimed there was sufficient evidence to support a duress defense because of the threatening behavior of the crowd, which included a group of "5 to 20 people" surrounding his van and yelling at him, a person jumping on the hood of his van, several people pounding on his windows, and a person breaking the driver's side window. This evidence was insufficient to constitute prima facie evidence of duress. There was no evidence that defendant was threatened with any conduct that would have caused a reasonable person to fear death or serious bodily injury. Although defendant's window was broken, it was broken in an attempt to stop him from driving into the crowd. The testimony was consistent that at the time that the window was broken, defendant had already gunned his engine and was moving toward the crowd. Further, as the trial court concluded, there was "absolutely no evidence that defendant was in fear." Rather, the evidence showed that the group's actions were aimed at convincing defendant to stop his van. Moreover, a defendant's fear of death or serious harm must be reasonable under an objective standard to support a duress defense. *Lemmon, supra* at 247. Defendant's alleged subjective fear of being physically assaulted by the group was clearly unreasonable because there was no evidence that any person threatened him with death or serious bodily harm. And, of course, any

threats would have been the result of defendant's own fault. *Lemmons, supra*. Consequently, the trial court properly declined to instruct the jury on the defense of duress.

IV. Right to Cross-Examination

Defendant's last argument is that he was denied his right of due process when the trial court precluded him from questioning the school principal about a prior incident in which a vehicle entered the grounds during a carnival. We disagree. "A trial court's limitation of cross-examination is reviewed for an abuse of discretion." *People v Crawford*, 232 Mich App 608, 620; 591 NW2d 669 (1998).

The prosecution moved in limine to preclude defendant from presenting evidence that two to three years earlier a vehicle drove onto the school grounds during a carnival, was stopped by several individuals, and drove off the premises. Defense counsel argued that the prior incident supported his defense that he was on the premises innocently and attempted to navigate his way out. In response to the trial court's questions, defense counsel indicated that he did not know if the driver of the other vehicle drove on the premises deliberately, that no one was injured, and that the driver safely exited the premises. The trial court ruled that the evidence was not relevant. During trial, the principal testified that the carnival had been held for 30 consecutive years and nothing like this incident had ever occurred before. Defense counsel argued that the principal's testimony "opened the door" to questioning regarding the prior incident. The trial court concluded that the prior incident was not relevant because no one was injured.

A defendant's constitutional right to confront his accusers is secured by the right to cross-examination guaranteed by the Confrontation Clause. US Const, Am VI; Const 1963, art 1 § 20; *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). A witness may be cross-examined on any matter relevant to any issue in the case, *People v Federico*, 146 Mich App 776, 793; 381 NW2d 819 (1985), but neither the Confrontation Clause nor due process confers an unlimited right to admit all relevant evidence or cross-examine on any subject. *Adamski, supra*. Rather, a trial court has wide latitude to impose reasonable limits on cross-examination based on concerns such as prejudice, confusion of the issues, or questioning that is irrelevant or only marginally relevant. *Id.*; *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992). Evidence is relevant if it has any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. MRE 401.

We agree with the trial court that the proffered evidence was not relevant. Evidence that another vehicle drove onto the school grounds during a carnival two or three years earlier, was stopped, and safely exited without any injury or damage did not have a tendency to make it more or less likely that defendant was not acting intentionally when, after driving onto the premises, he drove through the crowd, hit several people, and damaged property before fleeing. In sum, defendant failed to demonstrate that the prior incident was relevant to his own culpability; the inference defendant was attempting to draw between the prior incident and his actions was too tenuous. Consequently, the trial court did not abuse its discretion by foreclosing the cross-examination.

Affirmed.

/s/ Stephen L. Borrello

/s/ Christopher M. Murray

/s/ Karen M. Fort Hood