

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
September 20, 2012

v

JASMINE DESIREE HUNT,
Defendant-Appellant.

No. 303282
Wayne Circuit Court
LC No. 10-002199-FC

Before: CAVANAGH, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right her jury convictions of assault with intent to do great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b.¹ We affirm.

Defendant argues that the prosecution presented insufficient evidence for a jury to find, beyond a reasonable doubt, that she committed assault with intent to do great bodily harm less than murder in light of her mental health and provocation evidence. We disagree.

In reviewing the sufficiency of the evidence, this Court determines whether the evidence, viewed in the light most favorable to the prosecution, warrants a jury finding the defendant guilty beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000). Although this Court reviews the record de novo, *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999), “[t]he standard of review is deferential” and this Court must “draw all reasonable inferences . . . in support of the jury verdict,” *Nowak*, 462 Mich at 400.

“Assault with intent to commit great bodily harm less than murder requires proof of (1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder.” *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). Circumstantial evidence, and any reasonable inferences drawn from such evidence, may constitute sufficient proof of the elements of the crime. *People v Barclay*, 208 Mich App 670, 674; 528 NW2d 842 (1995). Minimal circumstantial evidence is sufficient to

¹ The jury found defendant guilty but mentally ill of both offenses.

prove intent because of the difficulty in proving an actor's state of mind. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). The jury may consider the weapon or instrument defendant used in the assault, and may infer the defendant's intent from the defendant's use of a dangerous weapon. *People v DeLisle*, 202 Mich App 658, 672; 509 NW2d 885 (1993).

To establish the affirmative defense of insanity, a defendant must prove that he or she lacked "substantial capacity either to appreciate the nature and quality of the wrongfulness of his or her conduct or conform his or her conduct to the requirements of law." *People v Weddell*, 485 Mich 942, 952-953; 774 NW2d 509 (2009), quoting MCL 768.21a(1). The defendant bears the burden of proving insanity by a preponderance of the evidence. *Weddell*, 485 Mich at 953. Proof by a preponderance of the evidence requires the defendant to establish that "the evidence supporting [defendant's insanity] outweighs the evidence supporting its nonexistence." *Id.*, quoting *Blue Cross & Blue Shield of Mich v Governor*, 422 Mich 1, 89; 367 NW2d 1 (1985).

The prosecution presented sufficient evidence for a reasonable trier of fact to find, beyond a reasonable doubt, that defendant intended to assault Steven Pittman and cause him great bodily harm. Defendant used a dangerous weapon, a nine-millimeter handgun, in the attack. Although defendant was allegedly sexually assaulted by Pittman, at the time of the shooting she had escaped from his car and stood in her driveway. She then retrieved her handgun from her purse and discharged at least four rounds at Pittman, hitting his car as he backed out of defendant's driveway and escaped. She shot Pittman's car in the front bumper, and shattered the passenger-side window. This evidence, if believed, is sufficient for a jury to find that defendant intended to assault Pittman and cause him great bodily harm.

Defendant argues that there was insufficient evidence for a jury to find that she intended to harm Pittman because the prosecution failed to rebut her expert's testimony that she was legally insane and could not form the requisite intent. However, the jury was free to reject her expert's testimony, even in the absence of rebuttal testimony. *People v Krugman*, 377 Mich 559, 563; 141 NW2d 33 (1966). Because the prosecution presented sufficient evidence of defendant's guilt, and the jury was free to reject defendant's expert testimony related to an insanity defense and claim that she lacked the mental capacity to intend the harm, this argument fails.

Moreover, the prosecution undermined defendant's expert testimony through cross-examination and presented strong rebuttal testimony that defendant understood her actions at the time she shot at Pittman. Defendant's expert psychiatrist testified that defendant suffered from post-traumatic stress disorder and that the disorder caused her to react violently to Pittman's attack. However, defendant never told the psychiatrist that she actually suffered from a flashback or that any other mental issue caused her to attack Pittman. In addition, the prosecution presented expert testimony establishing that, under the circumstances, defendant could appreciate the nature and consequences of her actions. Credibility determinations are within the province of the jury. *People v Givans*, 227 Mich App 113, 124; 575 NW2d 84 (1997).

Defendant also argues that her actions were provoked by Pittman's sexual assault which negated her intent to assault him and cause him great bodily harm. However, as the trial court noted, when charged with an assault-based crime, provocation cannot excuse a defendant's actions, and is insufficient to negate the specific intent necessary for a conviction of assault with

intent to do great bodily harm less than murder. See *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986). We therefore reject this argument.

Defendant also argues that she was denied the effective assistance of counsel because her attorney induced her to reject a plea agreement by promising that she would be acquitted of the charged offenses if she proceeded to trial. We disagree.

Whether a defendant has been deprived of the effective assistance of counsel is a mixed question of fact and constitutional law. *People v Grant*, 470 Mich 477, 484; 684 NW2d 686 (2004). Because this Court denied defendant's motion to remand, our "review is limited to mistakes apparent on the record." *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000).

"To establish ineffective assistance of counsel, defendant must first show that (1) his trial counsel's performance fell below an objective standard of reasonableness under the prevailing professional norms, and (2) there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different." *People v Uphaus*, 278 Mich App 174, 185; 748 NW2d 899 (2008). The defendant bears the burden of establishing both deficient performance and prejudice, and bears the burden of establishing the factual predicate for the claim. *Id.*

Here, defendant has failed to establish the factual predicate for her ineffective assistance of counsel claim. See *Hill*, 257 Mich App at 138-139. Although defendant argues the prosecution offered her a plea agreement requiring her to plead guilty to felony-firearm in exchange for the dismissal of the remaining charges, she fails to cite to any record evidence supporting this assertion. We have reviewed the lower court record and trial transcripts and find no reference to a plea agreement. Notably, the final pretrial conference summary does not indicate that the prosecution offered defendant a plea agreement. Nor does defendant support her bare assertion that her trial counsel induced her to reject this alleged offer by promising her that she would be found not guilty. Accordingly, defendant's ineffective assistance claim is without merit.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Pat M. Donofrio