

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
September 20, 2012

v

JERRY JUNIOR STOKES,

Defendant-Appellant.

No. 304031
Wayne Circuit Court
LC No. 10-011697-FH

Before: MURPHY, C.J., and MARKEY and WHITBECK, JJ.

PER CURIAM.

Defendant Jerry Stokes appeals as of right from his convictions of domestic violence¹ and felonious assault² following a bench trial. The trial court sentenced Jerry Stokes to serve concurrent prison terms of 93 days for domestic violence, and 32 months to four years for felonious assault. We affirm Jerry Stokes’s convictions and sentencing.

I. FACTS

A. TRIAL

This case arises out of an altercation between Jerry Stokes and his wife, Angela Stokes, on September 13, 2011. Angela Stokes originally testified that the altercation took place on September 6, 2011, but later stated that she was confused about the date and that the altercation took place on September 13. Angela Stokes testified that Jerry Stokes wanted to know where she went and whom she was with when she took the couple’s children and left a month earlier. She testified that when she refused to answer his questions, Jerry Stokes slapped her in the face, and punched her on her arm, chest, and thigh. Angela Stokes testified that after he punched her, Jerry Stokes placed a shaving knife against her throat and said that he “should cut [her] throat with this knife.” Angela Stokes described the knife as a two- or three-inch long knife with a wooden handle and a fixed blade. Angela Stokes admitted that she originally described the knife as a “razor blade” in her written statement.

¹ MCL 750.81(2).

² MCL 750.82.

Angela Stokes testified that when the couple's seven-year-old son knocked on the bedroom door, Jerry Stokes removed the knife and opened the bedroom door to speak with the son. She testified that after Jerry Stokes closed the bedroom door, he retrieved a machete from the bedroom closet and placed it against her thigh while saying that he should cut her with it. She testified that Jerry Stokes then put the machete down and he choked her until she lost consciousness. Angela Stokes testified that while Jerry Stokes was choking her, he told her that he should strangle her to death. She further testified that, after she regained consciousness, Jerry Stokes hit her on the face and threatened to shoot her with one of the guns located in their home. She testified that "[t]he whole thing lasted about a good hour," and that afterward, Jerry Stokes would not let her sleep, took her cell phone, and would not let her out of his sight.

The couple's son, Jamantray Stokes, testified that he called the police some day in September 2010. Jamantray Stokes testified that he called the police because he heard his father threaten to kill his mother, and he later saw a bruise on her arm. He testified that he spoke with Angela Stokes about his testimony, but that he was telling the truth and that she did not tell him what to say.

Officers Vettrains was one of two officers that responded to the dispatch. Officer Vettrains testified that after Jerry Stokes came to the door, Angela Stokes was standing behind him. Officer Vettrains testified that when the officers asked if everything was okay, Jerry Stokes stated that everything was fine, but Angela Stokes shook her head. Officer Vettrains testified that she then questioned Angela Stokes in the driveway, and Angela Stokes appeared very timid, was afraid to answer questions, and kept looking back toward the house. Officer Vettrains testified that she saw bruises on Angela Stokes's chest.

B. SENTENCING

At Jerry Stokes's sentencing hearing, the trial court had access to a presentence investigation report. The report included a victim's impact statement from Angela Stokes, in which she described years of abuse, described threats to her family, stated that she was terrified because of Jerry's Stokes's abuse and threats, and a stated that her children were in counseling.

Angela Stokes also spoke at the sentencing. She stated that Jerry Stokes abused her for over 15 years, and that the abuse included six black eyes and many incidents of bruising to her face and body. She further stated that Jerry Stokes pushed her head through a wall, put knives to her throat, cut her neck, choked her, beat her while she was pregnant with the intent to cause a miscarriage, and hit her while she was holding the children. Angela Stokes also stated that Jerry Stokes told her that he wanted her afraid of him, and threatened that if she ever called the police, he would harm her and her family. Angela Stokes spoke about a car accident Jerry Stokes was in, saying that the children told her Jerry Stokes was driving "kind of crazy" after taking pills he obtained "from some guy."

Jerry Stokes stated that many of the things Angela said were not true, and that "I've never even put my hands on her as far as in front of the kids." He denied putting his hands on Angela Stokes at all. Jerry Stokes also stated that the car accident occurred while he was taking medication under a doctor's care, and that it did not happen in front of his children.

The trial court noted that the sentencing guidelines placed Jerry Stokes at zero to nine months' imprisonment. The trial court listed as objective and verifiable facts that Jerry's Stokes had a history of abuse and violence, that he took drugs and drove, that he requested or forced abortions, that he used weapons and caused injuries, that he made past and present threats to Angela Stokes, the children, and other family members, and that he wanted Angela Stokes afraid of him. The trial court opined that "this guy is dangerous," as those facts indicated. The trial court's reasons for departing upward included the history of abuse, that Angela Stokes was a victim of battered woman syndrome, the history of Jerry Stokes's credible threats of violence, Jerry Stokes's history of physical, psychological, and emotional injury to the children and family, that Jerry Stokes used drugs and drove with his children in the car, and that Jerry Stokes's possession and use of dangerous weapons were not adequately taken into account by the sentencing guidelines. It concluded that the guidelines sentence was not proportional to the crimes, and departed upward from the sentencing guidelines.

II. SUFFICIENCY OF EVIDENCE

A. STANDARD OF REVIEW

A claim that the evidence was insufficient to convict a defendant invokes that defendant's constitutional right to due process of law.³ Thus, this Court reviews de novo the sufficiency of the evidence on appeal.⁴ When reviewing a challenge to the sufficiency of the evidence, we review the evidence in a light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.⁵

B. ELEMENTS OF THE CRIMES AND LEGAL STANDARDS

A person commits a felonious assault if that person "assaults another person with a gun, revolver, pistol, knife, . . . or other dangerous weapon without intending to commit murder or to inflict great bodily harm less than murder[.]"⁶ "The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery."⁷

³ *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992); see *In re Winship*, 397 US 358, 364; 90 S Ct 1068; 25 L Ed 2d 368 (1970).

⁴ *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

⁵ *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012).

⁶ MCL 750.82(1).

⁷ *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

A person commits domestic violence when that person “assaults or assaults and batters his or her spouse or former spouse[.]”⁸

The evidence will be sufficient in a criminal case when “the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable doubt.”⁹ “Circumstantial evidence and reasonable inferences that arise from the evidence can constitute sufficient proof of the elements of a crime.”¹⁰ Further, minimal circumstantial evidence will be sufficient to prove a defendant’s state of mind.¹¹ When reviewing the sufficiency of the evidence, we will not interfere with the trier of fact’s role to determine the weight of the evidence or the credibility of the witnesses.¹² We must resolve any conflicts in the evidence in the prosecution’s favor.¹³

C. APPLYING THE STANDARDS

Jerry Stokes claims that there was insufficient evidence of his intent to assault Angela Stokes, or that he placed Angela Stokes in reasonable fear of being battered, which are elements of both felonious assault and domestic violence. Jerry Stokes also claims that the prosecution did not prove that he used a dangerous weapon, an element of felonious assault.

Jerry Stokes first argues that insufficient evidence supported his convictions because none of the witnesses’ testimonies were credible. Specifically, Jerry Stokes argues that we should disregard Angela Stokes’s testimony because she imperfectly recalled the dates of the offenses, she left out details in her signed statement, including that Jerry Stokes threatened her with a machete and gun and choked her until she passed out, and she only identified the knife as a razor blade. Jerry Stokes argues that Jamantray Stokes’s testimony was also incredible, because he discussed his testimony with Angela Stokes before testifying. Jerry Stokes finally argues that Officer Vettrains’s testimony cannot support his convictions because Officer Vettrains testified that Angela Stokes’s chest was bruised, when the photographic evidence and other witnesses’ testimonies only established that Angela Stokes’s arm was bruised.

We conclude that the witnesses were not so impeached that we should disregard their testimony. We defer to the trier of fact’s role to determine the credibility of witnesses.¹⁴ Though we agree that defense counsel at trial impeached each of the witnesses in some fashion, we should disregard impeached testimony only if the testimony was so impeached that it no longer

⁸ MCL 750.81(2).

⁹ *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000).

¹⁰ *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003).

¹¹ *People v Fennell*, 260 Mich App 261, 270-271; 677 NW2d 66 (2004).

¹² *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

¹³ *Id.*

¹⁴ *Kanaan*, 278 Mich App at 619.

has probative value, or it contradicts with indisputable physical facts.¹⁵ Thus, we will consider these witnesses' testimonies when determining if the prosecution presented legally sufficient evidence on each element of the crimes.

Sufficient evidence established that Jerry Stokes placed Angela Stokes in a reasonable fear of an imminent battery, and that he intended to assault her. The prosecution establishes an "assault" if the prosecution proves either "an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery."¹⁶ Threatening conduct is sufficient to make a person reasonably fear an immediate battery.¹⁷ Threatening conduct further establishes the reasonable inference that the defendant intended to make the person fear a battery.¹⁸

Here, Angela Stokes testified that Jerry Stokes put a wooden-handled knife with a two- or three-inch blade up to her neck and told her that he should cut her throat. Jerry Stokes then placed a machete on her leg and threatened to cut her leg. Jerry Stokes also threatened to choke her to death, and threatened to shoot her with one of the two guns he kept in their home. The couple's son testified that he heard Jerry Stokes threaten to kill Angela Stokes. This testimony sufficiently establishes that Jerry Stokes assaulted Angela Stokes with the intent to place her in the fear of an immediate battery. This testimony also established the reasonable inference that he intended to put Angela Stokes in the fear of a battery.

Jerry Stokes also argues that because the police did not search for weapons, or ever find weapons on his person or in his home, the prosecution did not establish the elements of felonious assault beyond a reasonable doubt. As an initial matter, we note that Jerry Stokes has provided no authority for this proposition, and we may deem insufficiently briefed issues abandoned on appeal.¹⁹ However, we will consider this argument.

Angela Stokes's testimony was sufficient to establish that Jerry Stokes assaulted her with dangerous weapons. The prosecution can prove that a defendant possessed a weapon with circumstantial evidence and reasonable inferences arising from the evidence.²⁰ A knife with a blade of three inches is a dangerous weapon if it is likely to cause a serious injury in the manner that a defendant threatens to use it.²¹ Similarly, a household tool like a machete, hammer, or

¹⁵ *People v Lemmon*, 456 Mich 625, 645-646; 576 NW2d 129 (1998).

¹⁶ *People v Starks*, 473 Mich 227, 234; 701 NW2d 136 (2005).

¹⁷ *People v Reeves*, 458 Mich 236, 240-244; 580 NW2d 433 (1998).

¹⁸ *People v Sanford*, 402 Mich 460, 478-479; 265 NW2d 1 (1978); *People v Johnson*, 407 Mich 196, 222; 284 NW2d 718 (1979).

¹⁹ *Vanderwerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008).

²⁰ *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989).

²¹ *People v Czerwinski*, 99 Mich App 304, 307; 298 NW2d 16 (1980).

wrench is dangerous weapon if a defendant threatens to use it in a manner that could inflict a serious injury.²²

Here, Angela Stokes gave detailed testimony about the weapons that she claimed that Jerry Stokes assaulted her with. Angela Stokes testified that Jerry Stokes held a knife against her throat and threatened to cut it. The knife certainly would have seriously injured Angela Stokes if Jerry Stokes used it to cut her throat as he threatened. Angela Stokes also testified that Jerry Stokes held a machete against her thigh and threatened to cut her leg. Again, if Jerry Stokes used the machete in that fashion, it could inflict a serious injury. Angela Stokes's testimony was sufficient for the trier of fact to conclude that Jerry Stokes was armed with a dangerous weapon when he assaulted her, and we will not interfere with the finder of fact's role to determine the credibility of the witness. Thus, there was evidence that, when viewed in the light most favorable to the prosecution, would allow a finder of fact to conclude that Jerry Stokes committed a felonious assault.

The same testimony that established the assault element for felonious assault also established the assault element of Jerry Stokes's domestic violence conviction. Further, Angela Stokes testified that she and Jerry Stokes were married when he assaulted her. Thus a reasonable trier of fact could conclude that the prosecution proved the elements of domestic violence beyond a reasonable doubt.

III. DEPARTURE FROM THE SENTENCING GUIDELINES

A. STANDARD OF REVIEW

When reviewing a trial court's grounds for departing from the sentencing guidelines, this Court reviews for clear error the trial court's factual finding that a particular factor in support of departure exists.²³ We review de novo whether a factor is objective and verifiable.²⁴ We review for an abuse of discretion the trial court's determination that the factors in a particular case are substantial and compelling reasons to depart from the guidelines, and also review for an abuse of discretion the amount of the trial court's departure.²⁵ An abuse of discretion occurs when the trial court chooses an outcome falling outside the permissible principled range of outcomes.²⁶

²² *People v Brown*, 406 Mich 215, 220-223; 277 NW2d 155 (1979).

²³ *People v Babcock*, 469 Mich 247, 263-264; 666 NW2d 231 (2003).

²⁴ *Id.*

²⁵ *Id.* at 264-265; *People v Smith*, 482 Mich 292, 300; 754 NW2d 284 (2008).

²⁶ *Babcock*, 469 Mich at 269.

B. LEGAL STANDARDS

Our Legislature has enacted sentencing guidelines.²⁷ A trial court may depart from the appropriate guidelines range only if it states on the record substantial and compelling reasons for the departure, and the facts that support those reasons are objective and verifiable, keenly grab our attention, and are of “considerable worth” when determining a sentence.²⁸ Facts are objective and verifiable when they are actions or occurrences external to the mind and are capable of being confirmed.²⁹ The trial court’s ultimate sentence must be proportionate to the seriousness of the defendant’s conduct and prior criminal history.³⁰

When the trial court articulates several substantial and compelling reasons, if some of the reasons are valid and others are not, we must determine whether the trial court would have departed to the same degree based on the valid reasons alone.³¹ If the trial court would have imposed the same sentence regardless of a misunderstanding of the law, we may affirm.³²

C. APPLYING THE STANDARDS

The trial court departed from the guidelines range of zero to nine months for Jerry Stokes’s felonious assault, and instead sentenced him to 32 months to four years’ imprisonment. Jerry Stokes contends that it was improper for the trial court to rely on Angela Stokes’s allegations at the sentencing hearing because the prosecution did not prove the allegations by a preponderance of the evidence, or because he did not have the opportunity to challenge the allegations.

The trial court heard from both Angela Stokes and Jerry Stokes at the sentencing hearing. Jerry Stokes had the opportunity to challenge Angela Stokes’s statements at sentencing, and did challenge them; he argued that the statements were not true. We conclude that Jerry Stokes was given the opportunity to challenge Angela Stokes’s statements at his sentencing hearing.

We agree that the trial court improperly relied on Angela Stokes’s statements that Jerry Stokes drove while under the influence of drugs with his children in the car, when these statements were not included in the presentence investigation report and were not otherwise substantiated at trial. However, we conclude that the trial court would not have sentenced Jerry Stokes differently had it not relied on this factor. While sentencing, the trial court may consider

²⁷ MCL 769.34.

²⁸ MCL 769.34(3); *Babcock*, 469 Mich at 256-257, 272.

²⁹ *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003).

³⁰ *Smith*, 482 Mich at 300, 305.

³¹ *Babcock*, 469 Mich at 260-261, 273.

³² *Id.*; *People v Schaafsma*, 267 Mich App 184, 186; 704 NW2d 115 (2005).

all the record evidence, including the contents of a presentence investigation report.³³ The trial court may consider facts concerning pending charges, uncharged offenses, and prior acquittals, as long as the defendant may challenge the information.³⁴ If a defendant challenges the information, it must be substantiated by a preponderance of the evidence.³⁵ Though a victim has a right to make oral and written impact statements for sentencing, and the trial court may consider those requests, those requests are not evidence.³⁶

Here, Angela Stokes's statements at sentencing essentially mirrored her statements in the presentence investigation report, which was a part of the record that the trial court properly considered when sentencing Jerry Stokes. Angela Stokes did exceed the scope of her presentence investigation report when she stated that Jerry Stokes drove "kind of crazy" with his children in the car because he was taking pills. Jerry Stokes challenged this allegation, and no record evidence substantiates it. The trial court included this as a factor in its list of reasons why it was departing from the sentencing guidelines. However, the trial court focused much more extensively on Jerry Stokes's history of abuse and threats, the escalating actions that indicated his dangerousness, and the psychological impact of the violence on the children—all objective, verifiable facts, supported by the record. That Jerry Stokes drove while under the influence of drugs was only one factor among the many that the trial court relied on. We conclude that the trial court would have departed to the same extent without considering this factor. Thus, this error does not warrant reversal.

Jerry Stokes also challenges the trial court's conclusion that he was "really dangerous," arguing that a defendant's dangerousness is subjective and an impermissible reason to depart from the guidelines. A trial court's *opinion or speculation* about a defendant's future dangerousness is not objective or verifiable.³⁷ But the trial court may base a sentencing departure on a defendant's future dangerousness if objective and verifiable facts support the court's conclusion.³⁸ Recurring and escalating acts may indicate a defendant's dangerousness, and are objective and verifiable because they are external occurrences that the trial court can confirm.³⁹

Here, the trial court did not simply opine that Jerry Stokes was dangerous or speculate that he might be dangerous. The trial court relied on his history of recurring and escalating acts

³³ *People v Walker*, 428 Mich 261, 267-268; 407 NW2d 367 (1987); *Smith*, 482 Mich at 300.

³⁴ *People v Coulter (After Remand)*, 205 Mich App 453, 456; 517 NW2d 827 (1994).

³⁵ *Id.*

³⁶ MCL 780.763; *People v Steele*, 173 Mich App 502, 505; 434 NW2d 175 (1988); *People v McAllister*, 241 Mich App 466, 476-477; 616 NW2d 203 (2000).

³⁷ *People v Cline*, 276 Mich App 634, 651; 741 NW2d 563 (2007).

³⁸ *People v Horn*, 279 Mich App 31, 45; 755 NW2d 212 (2008).

³⁹ *Id.* at 46.

of domestic violence against Angela Stokes to reach its conclusion that Jerry Stokes's dangerousness and history of abuse justified its upward departure.

Finally, Jerry Stokes contends that his sentence is disproportionate because the trial court did not account for the characteristics of the offense or the offender. Jerry Stokes provides no factual support for this assertion, and we could consider it abandoned. However, we will briefly consider it. A trial court may justify the proportionality of its departure by comparing its sentence to the sentencing grid provided by the guidelines, and explaining why the substantial and compelling reasons are similar to conduct that would entail the higher sentence.⁴⁰ The trial court recognized the sentence that the guidelines provided, discussed at length the characteristics of the offense and of Jerry Stokes, and articulated that the shorter sentence provided by the guidelines would not be proportionate to the seriousness of his history of violence and abuse. We conclude that the trial court's sentence of 32 months to four years' imprisonment was within the reasonable range of permissible outcomes, and thus the trial court did not abuse its discretion.

We affirm.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ William C. Whitbeck

⁴⁰ *Smith*, 482 Mich at 318.