STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 20, 2012
v	No. 305934 Wayne Circuit Court
JUSTIN KYLE WILLIAMS, Defendant-Appellant.	LC No. 2011-001680-01-FC

Before: JANSEN, P.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of assault with intent to murder.[1] The trial court sentenced defendant to 12 to 50 years' imprisonment. We affirm.

I. SUFFICIENCY OF THE EVIDENCE

Defendant first contends that there was insufficient evidence to support his conviction. This Court reviews de novo a challenge to the sufficiency of the evidence.[2]

> When reviewing a claim that the evidence presented was insufficient to support defendant's conviction, this Court must view the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could find beyond a reasonable doubt that the prosecution established the essential elements of the crime.[3]

[1] MCL 750.83.

[2] *People v Hawkins*, 245 Mich App 439, 456; 628 NW2d 105 (2001) (citation omitted).

[3] *People v Kissner*, 292 Mich App 526, 533-534; 808 NW2d 522 (2011) (citation omitted).

"All conflicts with regard to the evidence must be resolved in favor of the prosecution. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime."[4]

To sustain a conviction of assault with intent to murder,[5] the prosecution was required to prove beyond a reasonable doubt that defendant committed "(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder."[6] A defendant's "[i]ntent is a question of fact to be inferred from the circumstances by the trier of fact."[7] "Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient."[8]

"A person who aids or abets the commission of a crime may be convicted as if he or she directly committed the crime."[9] The elements of aiding and abetting are:

> (1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that (the defendant) gave aid and encouragement.[10]

An aider and abettor's state of mind may be inferred from the facts and circumstances, including "a close association between the defendant and the principal, the defendant's participation in the planning or execution of the crime, and evidence of flight after the crime."[11]

The trial court may base its finding of an actual intent to kill on a broad scope of evidence.[12] "The intent to kill may be proven by inference from any facts in evidence."[13] A fact-finder may infer an actual intent to kill "from the nature of the defendant's acts constituting the assault."[14] Such considerations include "the temper or disposition of mind with which they

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[4] *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005) (citations omitted).

[5] MCL 750.83.

[6] *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999) (citation omitted).

[7] *People v Flowers*, 191 Mich App 169, 178; 477 NW2d 473 (1991) (citation omitted).

[8] *McRunels*, 237 Mich App at 181 (citation omitted).

[9] *People v Jackson*, 292 Mich App 583, 589; 808 NW2d 541 (2011) (citation omitted).

[10] *People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006) (citation omitted).

[11] *People v Carines*, 460 Mich 750, 758; 597 NW2d 130 (1999) (quotation omitted).

[12] See *People v Barclay*, 208 Mich App 670, 674; 528 NW2d 842 (1995).

[13] *Id*. (citation omitted).

[14] *People v Brown*, 267 Mich App 141, 149 n 5; 703 NW2d 230 (2005) (quotations and citations omitted).

were apparently performed, [and] whether the instrument and means used were naturally adapted to produce death[.]"[15]

Defendant argues the evidence showed that he did not fire the gun and that the prosecutor failed to introduce sufficient evidence to show that he had intent to injure or kill the victim. We disagree. In this case, there is sufficient evidence in the record that would allow a rational trier of fact to conclude beyond a reasonable doubt that defendant assaulted Sherrell Hunter with the intent to murder her. Hunter testified that she texted defendant to determine if he wanted to purchase two pounds of marijuana. Defendant responded that he wanted to purchase the marijuana and, over the course of several texts and phone calls, told Hunter where and when to meet him for the exchange. Defendant never told Hunter that he would be bringing another person, "Train," to the exchange or that that person would be purchasing half of the marijuana. Hunter did not know Train and had never spoken to Train. Hunter followed defendant's direction to walk down the street, retrieved the marijuana from her friend's car, and then followed defendant and Train into the vacant house.

Inside the house, defendant stood in front of Hunter while Train stood right behind her. When Hunter showed defendant the marijuana so he could inspect its quality, defendant attempted to walk off with the marijuana, and Hunter grabbed it back. Defendant said, "hold up," and then approached Hunter. Shortly thereafter, Hunter was shot in the head. Hunter could not testify with regard to who actually shot her because she never saw the gun. However, even though defendant may or may not have in fact pulled the trigger, there is no doubt that defendant lured Hunter into a vacant house, stood in front of one doorway while Train stood in front of another doorway, and with Train stole $2,200 worth of marijuana from Hunter. There is also no doubt that either defendant shot Hunter in the head or defendant stood by while Train shot Hunter in the head, at close range and with no warning. The evidence also established that defendant and Train left Hunter for dead, lying on the floor of a vacant house bleeding from the head, while they ran out of the back of the house with the bag of marijuana and fled the scene together. These circumstances do not suggest a man who was "merely present" but, rather, one who both planned and actively participated in the scheme to lure Hunter to a vacant house, isolate her, take the marijuana, shoot her to cover their tracks, and then flee.

Accordingly, the record evidence would allow a rational trier of fact to conclude beyond a reasonable doubt that defendant committed an act or encouraged Train in a manner that assisted Train in assaulting the victim with intent to murder.[16] The fact that a gun was used to commit the assault against Hunter, an instrument "naturally adapted to produce death,"[17] supports an inference that defendant acted with an actual intent to kill Hunter. Hence, under these circumstances, a rational trier of fact could have concluded that defendant either intended

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[15] *Id*.

[16] *Robinson*, 475 Mich at 6.

[17] *Brown*, 267 Mich App at 149 n 5.

to kill the victim or knew that Train intended to kill the victim.[18] Accordingly, there was sufficient evidence to convict defendant of assault with intent to murder.

II. GREAT WEIGHT OF THE EVIDENCE

Next, defendant argues that the verdict was against the great weight of the evidence. A new trial should not be granted on the ground that the verdict is against the great weight of the evidence unless the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand.[19] "Generally, a verdict may be vacated only when the evidence does not reasonably support it and it was more likely the result of causes outside the record, such as passion, prejudice, sympathy, or some other extraneous influence."[20]

Defendant argues that the verdict was against the great weight of the evidence because there was no proof of a common plan between defendant and Train, other than the purchase of marijuana. We disagree. As already discussed, the evidence at trial would have allowed a rational trier of fact to conclude that defendant and Train acted in accord with a common plan to isolate Hunter, take the marijuana instead of paying for it, and then murder Hunter to cover up the crime. Based on this record, with regard to defendant's participation, there is no "real concern that an innocent person may have been convicted" such that "it would be a manifest injustice" to allow the guilty verdict to stand.[21] Accordingly, defendant's conviction for assault with intent to murder was not against the great weight of the evidence.

III. SENTENCING VARIABLES

Finally, defendant maintains that he is entitled to resentencing because the trial court erred when it scored Offense Variables (OV) 1, 2, 6, and 14. This issue is preserved for this Court's review. Defendant preserved his objections to the scoring of OV 6 and OV 14 by raising them before the trial court during the sentencing hearing.[22] Defendant preserved his objections to the scoring of OV 1 or OV 2 in a motion to remand before this Court, which was denied.[23]

We review a trial court's scoring of the sentencing guidelines to determine whether the court properly exercised its discretion and whether the record evidence adequately supports a particular score.[24] "A scoring decision will be upheld if there is any evidence to support it."[25]

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[18] *Robinson*, 475 Mich at 6.

[19] *People v Lacalamita*, 286 Mich App 467, 469; 780 NW2d 311 (2009).

[20] *Id*. (citation omitted).

[21] *People v Lemmon*, 456 Mich 625, 639, 644; 576 NW2d 129 (1998) (citation omitted).

[22] MCL 769.34(10). See also *People v Endres (On Remand)*, 269 Mich App 414, 417; 711 NW2d 398 (2006).

[23] MCR 6.429(C); MCL 769.34(10).

[24] *People v Lechleitner*, 291 Mich App 56, 62; 804 NW2d 345 (2010).

To the extent this Court must construe or apply the statutory sentencing guidelines, such issues present questions of law that we review de novo.[26]

OV 1 pertains to the "aggravated use of a weapon" and is scored "by assigning the number of points attributable to the [subcategory] that has the highest number of points."[27] OV 1 should be scored at 25 points if "[a] firearm was discharged at or toward a human being or a victim was cut or stabbed with a knife or other cutting or stabbing weapon[.]"[28] Defendant asserts that no evidence was presented at trial to establish that he shot Hunter and therefore OV 1 should have been scored at 0. We disagree. Defendant misapprehends the requirements of the statute. To support a score of 25 points, the statute only requires that "a firearm was discharged at or toward a human being . . . ." Without a doubt, given that Hunter suffered a gunshot wound to the head, the evidence supports the trial court's 25-point score of OV 1. This conclusion is also consistent with MCL 767.39, which provides that an individual convicted as an aider and abettor "shall be punished as if he had directly committed such offense." Therefore, it was unnecessary to demonstrate that defendant personally possessed or used the weapon. The trial court properly scored OV 1 at 25 points.

Next, defendant asserts that the trial court improperly scored OV 2 at five points because the trial court did not find that he was the shooter. Five points are to be assigned, in accordance with MCL 777.32(1)(d), if "[t]he offender possessed or used a pistol, rifle, shotgun, or knife or other cutting or stabbing weapon." Here, defendant does not deny that his cohort, Train, was in possession of and used a firearm to shoot Hunter. In fact, defendant explicitly claimed in his statement that Train shot Hunter. Therefore, in accordance with MCL 767.39, defendant, as an aider and abettor, "shall be punished as if he had directly committed such offense." Thus, it was unnecessary to demonstrate that defendant was the shooter. The trial court properly scored OV 2 at five points.

Defendant next asserts that the trial court abused its discretion when it scored OV 6 at 25 points, arguing that it should have been scored at zero or 10 points at most. Under MCL 777.36(1), the trial court must score OV 6 on the basis of the offender's intent to kill or injure. The highest score, 50 points, is reserved for a "premeditated intent to kill" or other circumstances not relevant here. If the "offender had unpremeditated intent to kill, the intent to do great bodily harm, or created a very high risk of death or great bodily harm knowing that death or great bodily harm was the probable result," the trial court must score OV 6 at 25 points.[29] Ten points is the proper score if the defendant had the intent to injure or committed "gross negligence

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[25] *People v Kegler*, 268 Mich App 187, 190; 706 NW2d 744 (2005) (citation omitted).

[26] *People v Mack*, 265 Mich App 122, 125; 695 NW2d 342 (2005).

[27] MCL 777.31(1).

[28] MCL 777.31(1)(a).

[29] MCL 777.36(1)(b).

amounting to an unreasonable disregard for life."[30] Only if the offender had "no intent to kill or injure" should zero points be scored.[31]

The evidence established that Hunter was shot in the head, just above her left eyebrow. The trial court specifically found that Hunter's medical records established that she suffered a traumatic brain injury and nearly died from the gunshot wound. This evidence supports the trial court's conclusion that defendant lured Hunter into the vacant house with the intent of stealing the $2,200 worth of marijuana instead of paying her for it, and then defendant and his cohort tried to cover up the theft by killing her.[32] Moreover, Hunter was shot in the head, a vulnerable area of the body, at close range — two feet if defendant was the shooter and mere inches if Train was the shooter. Thus, there was evidence to support the trial court's scoring of OV 6 at 25 points.[33]

OV 14 addresses the offender's role. Ten points are to be assessed if the defendant "was a leader in a multiple offender situation."[34] In determining whether an offender was a leader in a multiple offender situation, this Court must review the entire criminal transaction.[35] Here, the evidence establishes that defendant was the impetus for the entire criminal episode. Defendant was the only person in contact with Hunter before the shooting. Defendant never told Hunter that he would be bringing another person to the exchange. Train was unknown to Hunter and she had never spoken to Train, therefore Train could not have been part of the exchange without defendant's invitation. Moreover, Hunter testified that during the incident she only spoke to defendant, that defendant never introduced her to Train, and that Train never said a word to her during the exchange. Defendant was the only person to interact with Hunter and Train's involvement was only prompted by defendant's orchestration of the common plan to rob and shoot Hunter. The record thus supports the trial court's finding that defendant was a leader in a multiple offender situation and its assessment of 10 points for OV 14.

In sum, there was sufficient evidence to convict defendant of assault with intent to murder, the verdict was not against the great weight of the evidence, and the trial court properly sentenced defendant within accurately scored guidelines and he is not entitled to resentencing.

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[30] MCL 777.36(1)(c).

[31] MCL 777.36(1)(d).

[32] See *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997) (noting that the intent to kill may be proven by inference from any facts in evidence).

[33] MCL 777.36(1)(b).

[34] MCL 777.44(1)(a).

[35] MCL 777.44(2)(a).

Affirmed.

/s/ Kathleen Jansen
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan