STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

        Plaintiff-Appellee,

v

STEVEN THADDEUS EDWARDS,

        Defendant-Appellant.

UNPUBLISHED
July 28, 1998

No. 197480
Oakland Circuit Court
LC No. 95-141975-FC

Before: Saad, P.J., and Wahls and Gage, JJ.

PER CURIAM.

The jury convicted defendant of assault with intent to commit murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b(1), MSA 28.242(2)(1). Defendant appeals as of right, and we affirm.

I

First, defendant argues that the trial court erroneously admitted evidence that he tried to hire a hit man to kill the victim (the principal witness against him). Finding no abuse of discretion, we disagree. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994), sets forth the test for admission of "other act" evidence pursuant to MRE 404(b). First, the evidence must be offered for a proper purpose. Second, the evidence of the subsequent act must be relevant. Third, the trial court must determine whether the probative value of the similar acts evidence is substantially outweighed by its potential for unfair prejudice. Fourth, the trial court shall, upon request, issue a limiting instruction. *Id*.

Here, clearly the evidence was admitted for a proper purpose. The elements of assault with intent to commit murder are: (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing a murder. *People v Barclay*, 208 Mich App 670, 674; 528 NW2d 842 (1995). Here, evidence of defendant's attempt while in jail to hire a hit man to kill his former girlfriend before his preliminary hearing was offered to establish that defendant intended to kill his former girlfriend when he shot her in the head at close range. In addition, because defendant maintained an alibi defense,

the question of the identity of the shooter became more difficult to prove. Because circumstantial evidence and reasonable inferences arising from such

evidence may constitute satisfactory proof of the elements of the offense, see *People v Safiedine*, 163 Mich App 25, 29; 414 NW2d 143 (1987), the testimony regarding defendant's subsequent bad act was admitted for a proper purpose.

We find the next *VanderVliet* factor also met here: the evidence was relevant because it increased the probability that defendant was the individual who shot the victim and supported the contention that he intended to kill her. Similarly, the third *VanderVliet* factor was also met here: the evidence was highly probative and not *substantially* outweighed by unfair prejudice because the subsequent act was evidence of a scheme or plan to do the very act that defendant was charged with committing.

Finally, the trial court gave a limiting instruction to the jury telling them that the evidence could only be considered for the purpose of determining the identity of the individual who shot defendant's former girlfriend and the intent of the individual responsible for the shooting. Thus, the trial court's admission of evidence of defendant's attempt to hire a hit man was not an abuse of discretion.

II

Next, defendant complains about remarks the prosecutor made in opening and closing statements which defendant contends were not supported by the facts. Because defendant failed to object during the prosecutor's opening statement, we inquire only whether manifest injustice occurred. *People v Etheridge,* 196 Mich App 43, 56; 492 NW2d 490 (1992). Because there was factual support for the prosecutor's remarks and because the trial court instructed the jury that the lawyer's statements and arguments were not evidence, there was no miscarriage of justice.

Defendant points to three comments made by the prosecutor during her closing statement. Upon defense counsel's objection to one comment, the trial court instructed the jury to disregard it. The remaining two comments had evidentiary support. Because the prosecutor did not argue facts not in evidence and because the prosecution is entitled to argue all reasonable inferences arising out of the evidence, *People v Bahoda,* 448 Mich 261, 282; 531 NW2d 659 (1995), the prosecutor's remarks did not result in manifest injustice.

III

Finally, defendant alleges that the trial court abused its discretion by sentencing defendant to seventeen to thirty years, in an upward departure from the sentencing guidelines. Again, we disagree. A sentence must be proportionate to the seriousness of the crime and the defendant's criminal record. *People v Phillips*, 203 Mich App 287, 290; 512 NW2d 62 (1994). Whenever the recommended ranges are considered an inadequate reflection of the seriousness of the matter at hand, a sentencing court is entitled to depart from the guidelines' range. *Id*. at 290-291. Departures are appropriate where the guidelines do not adequately account for important factors that legitimately can be considered at sentencing. *Id.* at 291.

The trial court correctly found that the proposed range of the sentencing guidelines was inadequate here. Given defendant's continued reprehensible conduct after the initial crime, the trial court was fully justified in increasing defendant's sentence beyond the guidelines. Defendant put a pillow over her face and shot his former girlfriend in the head.. After shooting her, defendant left her alone in her apartment to die, and made no effort to contact emergency personnel. The assault was calculated without concern that the victim was the mother of his child. Her injuries were and remain extensive. Moreover, defendant attempted to have her killed after he was arrested and in jail. In addition to these facts, the trial court articulated the following factors: (1) the need for discipline and punishment of defendant; (2) the protection of society; (3) the potential for rehabilitation, and (4) the need to deter others from committing similar offenses. We agree with the trial court's conclusion -- the recommended range was inadequate given defendant's despicable conduct.

Affirmed.

/s/ Henry W. Saad
/s/ Myron H. Wahls
/s/ Hilda R. Gage