STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY E. COX,

Defendant-Appellant.

UNPUBLISHED
October 31, 2000

No. 214714
Wayne Circuit Court
LC No. 98-000278

Before: Bandstra, C.J., and Saad and Meter, JJ.

PER CURIAM.

The jury convicted defendant of second-degree murder, MCL 750.317; MSA 28.549, and assault with intent to murder, MCL 750.83; MSA 28.278. The court sentenced defendant as a third habitual offender, MCL 769.11; MSA 28.1083, to "natural life" in prison for the second-degree murder conviction, and "natural life" in prison for the assault with intent to murder conviction. Defendant appeals as of right and we affirm.

Defendant was originally charged with first-degree murder and assault with intent to murder in connection with the stabbing death of Sonja McCauley and the stabbing of her daughter, Camille McCauley, on December 6, 1997, at Sonja's home in Detroit.

Defendant argues that there was insufficient evidence to support his convictions of second-degree murder and assault with intent to murder because the prosecution did not meet its burden of proving that defendant did not act in self-defense. We disagree. When determining if sufficient evidence was presented to sustain a conviction, this Court reviews the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), mod on other grounds 441 Mich 1201 (1992).

Conviction of second-degree murder requires: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse. *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998); *People v Mayhew*, 236 Mich App 112, 125; 600 NW2d 370 (1999). The offense of second-degree murder does not require an actual intent to harm or kill; rather, it

is sufficient that the defendant intended to do an act that is in obvious disregard of life-endangering consequences. *Goecke, supra,* 457 Mich 466; *Mayhew, supra,* 236 Mich App 125. The elements of assault with intent to murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Warren (On Remand),* 200 Mich App 586, 588; 504 NW2d 907 (1993). Circumstantial evidence and reasonable inferences arising from that evidence may constitute satisfactory proof of the elements of an offense. *People v Plummer,* 229 Mich App 293, 299; 581 NW2d 753 (1998).

At trial, defense counsel's theory of the case was mistaken identity. He maintained that Camille, the prosecution's main witness, was not credible as to the identity of her attacker. Specifically, defense counsel took exception to Camille's testimony that she was sure defendant was her attacker because sunlight was streaming through the windows, although it was 6:30 on a December morning and the blinds were drawn. Defense counsel also pointed out that there was no blood evidence linking defendant to the crime and, that on the night of the incident, Camille called her attacker by the name "Abdul." However, Camille identified defendant from a police photograph as the man who stabbed her, and who she knew as "Abdul." She further identified defendant in court as the person who came to her mother's home at about 5:00 a.m., while the lights were on, and who stabbed her at about 6:30 a.m., shortly after she awakened. Camille was not only positive in her testimony, but had an opportunity to become familiar with defendant over the six previous years she had known him to be her mother's acquaintance. Camille also knew defendant through her boyfriend. In light of the surrounding facts, we conclude that the prosecution presented sufficient evidence to sustain Camille's identification of defendant, which was thoroughly explored at trial. The jury had the opportunity to see and hear Camille and ruled according to its determination of her credibility. *People v Daniels,* 172 Mich App 374, 378; 431 NW2d 846 (1988).

Defendant further claims that the prosecution failed to disprove his testimony that he was involved in a physical altercation with Sonja, during which she stabbed him. Defendant correctly points out that, once a defendant introduces evidence that he acted in self-defense, the prosecution has the burden of disproving self-defense beyond a reasonable doubt. *People v Fortson,* 202 Mich App 13, 20; 507 NW2d 763 (1993). However, defendant did not testify at trial. Rather, it was in his second police statement, which was admitted into evidence, that defendant claimed self-defense. In that statement, defendant admitted stabbing Sonja and Camille. He stated that, while visiting Sonja, she refused to let him leave and attacked him with a knife. He took the knife from her and stabbed her. Defendant claimed that he stabbed Camille after she jumped on his back while he was tussling with Sonja.

Although defense counsel did not argue the theory of self-defense to the jury, the trial court specifically instructed the jury on self-defense. The killing of another person in self-defense is justifiable homicide if an individual honestly and reasonably believes that his life is in imminent danger or that there is a threat of serious bodily harm. *People v Heflin,* 434 Mich 482, 502; 456 NW2d 10 (1990). However, an act committed in self-defense, but with excessive force, or in which defendant was the initial aggressor, does not meet the elements of lawful self-defense. *Id.* at 509.

Viewed in a light most favorable to the prosecution, there was sufficient evidence to sustain defendant's convictions of second-degree murder and assault with intent to murder. Moreover, there was ample evidence from which the jury could conclude that the prosecution met its burden of disproving that defendant acted in self-defense. Defendant's claim of self-defense might be consistent with a single stab wound, but it is inconsistent with the fact that Sonja suffered multiple blunt force trauma, and Sonja and Camille both suffered multiple stab wounds. Yet, there was no evidence that defendant suffered any injury. At a minimum, defendant used more force than necessary to repel an attack and to safely retreat from the apartment. Therefore, reversal is unwarranted on this ground.

Defendant also argues that his sentences of "natural life" for the second-degree murder and assault with intent to murder convictions are legally impermissible. We disagree. The offenses of second-degree murder and assault with intent to murder each carry a maximum sentence of life or any term of years. MCL 750.317; MSA 28.549; MCL 750.83; MSA 28.278. This Court, in *People v Rowls*, 28 Mich App 190, 193-194; 184 NW2d 332 (1970), held that the word "natural" added to the word "life" is mere surplusage, and is not a restriction or limitation upon the word "life" that would make a sentence of "natural life" legally impermissible. Our Supreme Court, in *Glover v Parole Bd*, 460 Mich 511, 514 n 3; 596 NW2d 598 (1999), recently confirmed that the word "natural" has no meaningful effect on a life sentence for second-degree murder or assault with intent to murder. Citing *Rowls, supra*, the Court stated that, although the defendant's judgment of sentence used the term "natural life," the defendant actually received parolable life sentences because a trial court is without authority to impose a sentence of life without parole for second-degree murder or assault with intent to murder. *Id.* Therefore, despite the terminology used by the sentencing judge, defendant is entitled to parole consideration, as required under MCL 791.234; MSA 28.2304. Therefore, defendant is not entitled to resentencing on the ground that his sentence was legally impermissible.

Finally, defendant argues that the trial judge's imposition of a "natural life sentence" indicates that he disregarded the jury's verdict of second-degree murder, and independently found defendant guilty of first-degree murder, and sentenced him on that basis. Defendant's argument is without merit. Although a sentencing court is allowed wide latitude in imposing sentence, the court may not make an independent finding of guilt and sentence a defendant on the basis of that finding, rather than the crime of which defendant was convicted. *People v Shavers*, 448 Mich 389, 393; 531 NW2d 165 (1995); *People v Dixon*, 217 Mich App 400, 410; 552 NW2d 663 (1996). Rather than citing specific language from the sentencing judge in support of his argument, defendant argues that the sentence is per se evidence of an independent finding that he is guilty of first-degree murder.

The trial judge appropriately articulated on the record the factors influencing his sentencing decision. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987); *People v Peña*, 224 Mich App 650, 661; 569 NW2d 871 (1997). He considered defendant's prior criminal history and the nature of the offense.[1] After reviewing the sentencing transcript, we cannot conclude that the trial judge

---

[1] Because defendant was sentenced as an habitual offender, the sentencing guidelines did not apply. *People v Cervantes*, 448 Mich 620, 625; 532 NW2d 831 (1995). The sentence imposed, however, fell within the statutory range and was proportionate. Therefore, any error in referencing the guidelines

(continued…)

made an independent finding that defendant was guilty of first-degree murder and then sentenced him on that basis. Therefore, defendant is not entitled to resentencing.

Affirmed.

/s/ Richard A. Bandstra
/s/ Henry William Saad
/s/ Patrick M. Meter

(…continued)

by the sentencing court was harmless. See *People v St John*, 230 Mich App 644, 649; 585 NW2d 849 (1998).