STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 21, 2006
v	No. 263089 Kalamazoo Circuit Court
ARTHUR JAMES WALKER, Defendant-Appellant.	LC No. 04-001531-FC

Before: O'Connell, P.J., and White and Markey, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit murder, MCL 750.83, and first-degree home invasion, MCL 750.110a. He was sentenced to 15 to 30 years' imprisonment for assault with intent to commit murder, and 10 to 20 years' imprisonment for first-degree home invasion. He appeals his conviction as of right. We affirm.

On August 16, 2004, Bryan Stallworth was sleeping in his bedroom in a boarding house when he was awakened by a loud pounding on his door. Before he reached the bedroom door, defendant broke it in and shouted, "Where's my money?" Stallworth replied, "What money?" When he asked defendant to leave the room, defendant began slashing Stallworth with a knife. Defendant threatened Stallworth, saying "one of us gonna die today." Stallworth fought back, punching defendant several times in the face. He also picked up a ceramic table lamp and hit defendant across the shoulders. After a brief standoff, defendant left through the front door of the house. Stallworth pursued defendant outside, but was stopped by Robert Abbott, a friend of defendant, and another boarder in the house. Abbott told defendant to leave after he noticed the victim's injuries and after defendant threatened the victim, stating "I'm going to kill that son of a bitch; he done-he done hit me." The victim suffered nine lacerations to his neck, chest, arms, back, and abdomen that required seventy-three stitches and eighteen staples to close.

Defendant first argues on appeal that there was insufficient evidence to support his conviction for assault with intent to commit murder. He claims that the prosecution failed to prove that defendant actually intended to kill Stallworth. According to defendant, none of the injuries inflicted were life-threatening and he acted in self-defense, so the evidence was insufficient to establish the requisite intent. We disagree. We review de novo a claim of insufficient evidence. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether

any 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, amended 441 Mich 1201 (1992). Furthermore, in deferring to the jury's factual determination, "a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). An actor's specific intent "may be express or it may be inferred from facts and circumstances." *People v Beaudin*, 417 Mich 570, 575; 339 NW2d 461 (1983). The intent to kill can be inferred from the use of a dangerous weapon. *People v Daniels*, 163 Mich App 703, 706-707; 415 NW2d 282 (1987). A folding or pocketknife, if used to assault a victim, is a dangerous weapon. *People v Brown*, 406 Mich 215, 220; 277 NW2d 155 (1979). Additionally, the injuries themselves may indicate the assailant's intent to kill. *People v Mills*, 450 Mich 61, 71; 537 NW2d 909 (1995).

"The elements of the crime 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 murder." *People v Lugo*, 214 Mich App 699, 711; 542 NW2d 921 (1995). In this case, defendant used a knife as a dangerous weapon to assault his victim. Defendant slashed the victim's neck near the carotid artery. Although the wounds inflicted upon the victim were not life threatening, testimony revealed that they would have been life-threatening if they were deeper. According to the victim's treating physician, the wounds were located in a "good spot" if one wanted to kill someone. Defendant also inflicted several gashes on the victim's chest, near the heart and lungs, and he attempted to slash the victim's head and face. From the number of lacerations and the locations of the wounds, a jury could reasonably infer that defendant intended to kill Stallworth. Moreover, defendant stated that "one of us gonna die today," and, "I'm going to kill that son of a bitch; he done-he done hit me." Viewing the evidence presented in the light most favorable to the prosecution, the prosecutor presented sufficient evidence that defendant intended to kill the victim. *Wolfe*, *supra*.

Defendant next argues on appeal that there was insufficient evidence to support the conviction for first-degree home invasion because the prosecution presented no evidence that defendant entered the victim's room without permission. We disagree. To support the first-degree home invasion charge, the prosecutor only needed to demonstrate that defendant entered Stallworth's room without permission and then assaulted him while inside. MCL 750.110a(2). The prosecutor provided evidence that defendant forced the door to enter Stallworth's room while a groggy Stallworth was awakening to investigate the ruckus. Before Stallworth could reach the door, defendant entered, demanded money, and then assaulted Stallworth inside the room with a knife. Under the circumstances, the prosecutor presented sufficient evidence to substantiate the charge.

Finally, defendant argues that the trial court erred when it provided the jury with a modified flight instruction. CJI2d 4.4. Defendant claims there was no evidence that he tried to run away or hide in the sense that the jury instruction implies. We disagree. "The determination whether a jury instruction is applicable to the facts of the case lies within the sound discretion of the trial court." *People v Ho*, 231 Mich App 178, 189; 585 NW2d 357 (1998). Here, there was sufficient evidence that defendant fled the scene after hearing that 911 had been called and that police would be arriving soon. Although he went home, he quickly left again and went to his cousin's house. He left his cousin's house just moments before police arrived. He then went to the porch of someone else's home. The trial court modified the instruction to take into

consideration the specific circumstances of the case, noting that the defendant "left the scene" not that he ran or hid. "Even though the instructions may be somewhat imperfect, there is no error if they fairly presented to the jury the issues to be tried and sufficiently protected the rights of the defendant." *People v Harris*, 190 Mich App 652, 664; 476 NW2d 767 (1991). The instructions in this case satisfied these criteria.

Affirmed.

/s/ Peter D. O'Connell
/s/ Helene H. White
/s/ Jane E. Markey