# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>December 21, 2010 |
| v | No. 294765<br>Wayne Circuit Court |
| LONDELL FLUINTE SWANIGAN,<br><br>Defendant-Appellant. | LC No. 07-023452-FC |

Before: BECKERING, P.J., and TALBOT and OWENS, JJ.

PER CURIAM.

Londell Swanigan pleaded guilty but mentally ill to attempted murder[1] and first-degree child abuse[2], and was sentenced as an habitual offender[3] to concurrent prison terms of 9 to 30 years for each conviction. Swanigan now challenges his attempted murder conviction, asserting insufficient evidence. He also contends error in the scoring of two offense variables under the sentencing guidelines. We affirm.[4]

As a factual basis for his plea, Swanigan admitted that he intentionally tossed a four-month-old baby during a domestic dispute with the child's mother. The child struck a glass coffee table and shattered the glass, causing severe injuries including multiple cuts to the child's arms, right side, and legs.

Swanigan first contends that his conviction for attempted murder must be vacated because there is insufficient evidence to support the conviction. To the extent Swanigan is raising a general challenge contesting the sufficiency of evidence to support a conviction of

[1] MCL 750.91.

[2] MCL 750.136b.

[3] MCL 769.11 (third offense).

[4] This appeal has been decided without oral argument pursuant to MCR 7.214(E).

attempted murder, that issue was waived by his guilty plea. In accordance with established case law, when a defendant pleads to the charges, he makes "the issue of [his] factual guilt irrelevant" because the plea "conclusively resolved the issue of [his] factual guilt in favor of the state. Therefore, the state does not have to bear the burden of producing sufficient evidence to prove [his] guilt beyond a reasonable doubt."[5]

To the extent Swanigan is arguing that the factual basis for his plea was inadequate, that issue is not properly before this Court because he did not timely raise the issue in a motion to withdraw his plea.[6] Although Swanigan filed a motion to remand, which we denied, the motion did not seek a withdrawal of his plea. Swanigan also failed to submit his motion to remand within the six-month period for filing a motion to withdraw the plea. He is, therefore, limited to seeking relief "in accordance with the procedure set forth in subchapter 6.500," which governs motions for relief from judgment.[7] We note that the lower court record contains a document entitled "Settled Record For Plea Of Guilty But Mentally Ill" that is signed by both counsel and the trial judge. The content of that document provides a more than sufficient factual basis to support the plea. Based on the record before us and the procedural history, we find that Swanigan is not entitled to appellate relief from his guilty plea.

Swanigan also argues that the trial court erred in scoring offense variables (OVs) 1 and 2 of the sentencing guidelines. Viewing the glass coffee table as a weapon, the trial court scored ten points for OV 1[8] and five points for OV 2.[9] Swanigan does not dispute that a glass coffee table can be used as a weapon, but contends that he did not use it as such because he did not pick it up and throw it at someone. In other words, he implies that an ordinary object cannot be a weapon if it is stationary. Swanigan also asserts that he never intended for the baby to hit the coffee table.

A challenge to the scoring of the sentencing guidelines involves a question of statutory interpretation that this Court reviews de novo.[10] To the extent the challenge involves the trial court's findings of fact; this Court reviews the trial court's findings for clear error.[11] "This Court reviews a trial court's scoring decision under the sentencing guidelines to determine whether the trial court properly exercised its discretion and whether the record evidence adequately supports

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[5] *People v New*, 427 Mich 482, 494; 398 NW2d 358 (1986).

[6] MCR 6.310(D).

[7] See MCR 6.310(C).

[8] MCL 777.31(1)(d), (victim touched by other type of weapon).

[9] MCL 777.32(1)(d), (offender possessed or used a cutting or stabbing weapon).

[10] *People v Osantowski*, 481 Mich 103, 107; 748 NW2d 799 (2008).

[11] *Id*. at 111-112.

a particular score."[12] "A trial court's scoring decision for which there is any evidence in support will be upheld."[13]

As recognized by both parties, this Court has previously determined that a glass mug could qualify as a "weapon" for purposes of OV 1 where it was repeatedly used to strike a victim in the head.[14] Although Swanigan concedes that a glass table can, under certain circumstances, be a weapon if it is used to strike a victim, he contends that this case is distinguishable because the table was merely a stationary object, which he did not wield or intend to use as a weapon.

With respect to whether an ordinary stationary object may be deemed a "weapon," we conclude that an object's designation as a weapon is not dependent on the offender physically using the object to strike the victim. As this Court has observed:

> "The character of a dangerous weapon attaches by adoption when the instrumentality is applied to use against another in furtherance of an assault. When the purpose is evidenced by act, and the instrumentality is adapted to accomplishment of the assault and capable of inflicting serious injury, then it is when so employed, a dangerous weapon."[15]

Swanigan threw the four-month-old child in the direction of a glass table with enough force to shatter the table. By its very nature, a shattering glass table is capable of inflicting serious injury and, accordingly, may qualify as a weapon for purposes of OV 1 and OV 2. To the extent Swanigan contends that he did not intend to toss the baby onto the coffee table, the trial court made a factual finding that defendant *did* intend to use the table to hurt the child, and that finding is not clearly erroneous. Although Swanigan was unwilling to state at the plea hearing that he intended for the child to strike the glass table, the trial court could properly infer his intent from other available evidence, such as the "Settled Record For Plea Of Guilty But Mentally Ill." When scoring the sentencing guidelines, a trial court has discretion in determining the number of points to be scored, provided that record evidence adequately supports a particular score.[16] "Scoring decisions for which there is any evidence in support will be upheld."[17]

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[12] *People v Steele*, 283 Mich App 472, 490; 769 NW2d 256 (2009) (citations and internal quotation marks omitted).

[13] *Id*. (citations and internal quotation marks omitted).

[14] *People v Lange*, 251 Mich App 247; 650 NW2d 691 (2002).

[15] *Id.* at 256 (citation omitted).

[16] *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006).

[17] *Id.*

Because we are not left with a definite and firm conviction that the trial court erred in finding that Swanigan intentionally used the table to hurt the child, we conclude that OV 1 and OV 2 were properly scored.

Affirmed.

/s/ Jane M. Beckering
/s/ Michael J. Talbot
/s/ Donald S. Owens