

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
December 18, 2014

v

MICHAEL WILLIAMS,

No. 318860  
Wayne Circuit Court  
LC No. 13-004604-FH

Defendant-Appellant.

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Before: RIORDAN, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

After a jury convicted defendant, Michael Williams, of assault with intent to do great bodily harm less than murder, MCL 750.84, and aggravated domestic assault, MCL 750.81a(2), the trial court sentenced defendant to concurrent prison terms of 76 to 120 months for the assault conviction and 9 to 12 months for the domestic assault conviction. Defendant appeals as of right. We affirm.

I. SUFFICIENCY OF THE EVIDENCE

Defendant argues that the evidence was insufficient to support his conviction of assault with intent to do great bodily harm less than murder. We review de novo a challenge to the sufficiency of the evidence. *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). In reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). It is for the trier of fact to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of assault with intent to do great bodily harm less than murder are (1) an assault, (2) done with an intent to do great bodily harm less than murder. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). An “assault” is defined as “either an attempt to commit a battery or an unlawful act that placed another in reasonable apprehension of receiving

an immediate battery.” *People v Starks*, 473 Mich 227, 234; 701 NW2d 136 (2005). “This Court has defined the intent to do great bodily harm as an intent to do serious injury of an aggravated nature.” *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005) (citation and quotation omitted). The defendant’s intent may be inferred from all the facts and circumstances surrounding the crime, *People v Lugo*, 214 Mich App 699, 709-710; 542 NW2d 921 (1995), including the defendant’s acts, the means employed to commit the assault, and the extent of the victim’s injuries, although actual physical injury is not a necessary element of the crime, *People v Harrington*, 194 Mich App 424, 430; 487 NW2d 479 (1992).

This case arose out of three attacks defendant perpetrated on the victim, who was defendant’s girlfriend or former girlfriend. The victim and defendant attended a birthday party together. The victim decided to leave the party, and defendant went with her. As the victim began to drive away with defendant in her vehicle, defendant suddenly became angry with her and started using profanity. The victim pulled over to ask defendant to stop using profanity. Defendant then grabbed the victim’s neck and began choking her. The victim could not breathe and called out her daughter’s name in an effort to make defendant stop choking her. Defendant eventually let go of the victim, but after a brief respite, lunged at her once again. This time, the victim was able to evade defendant’s grasp and she left the vehicle and started walking back to the party, looking for help. Defendant followed the victim and resumed his attack by grabbing her by the top of her head and throwing her to the ground. Defendant punched, kicked, and stomped on the victim as she curled into a ball to protect herself. Each time he struck the victim, defendant used more profanity. The victim testified that the beating lasted “a good while.” Eventually, partygoers were able to stop defendant from beating the victim.

After receiving assistance from some of the partygoers, the victim found her car keys and eyeglasses that had broken during the assault, telephoned the police, and drove to a gas station to wait for the police. The victim went inside the gas station to purchase cigarettes. She was joined at the gas station by defendant’s nephew, who went there to assist her. Shortly thereafter, defendant followed her, knocked over his nephew, who was trying to shield the victim from defendant, and launched into another assault on the victim. Defendant repeatedly punched the victim in the face until she fell to the floor, and then he began kicking her and stomping her. The victim testified that defendant was stomping her “like I was an ant[.]” Eventually, defendant’s nephew convinced him to stop the attack by warning defendant that his actions were likely being recorded by surveillance cameras. A gas station attendant confirmed the attack inside the gas station.

The victim sought medical treatment after the assaults and was diagnosed with an orbital fracture. The victim reported that at the time of trial, she continued to have problems with her eye for which she was still being treated, and her vision was impaired by a “flurry” or “little black thing that stays in [her] eye” all the time. She also reported that she continued to experience neck pain from the assaults for which she had recently undergone a CAT scan.

Based on the foregoing, there was sufficient evidence for a rational jury to find, beyond a reasonable doubt, that defendant committed the offense of assault with intent to commit great bodily harm less than murder. There was ample evidence of an assault, as defendant choked the victim, struck her in the face, kicked her, and stomped her. In addition, defendant’s actions provided circumstantial evidence of his intent to do great bodily harm. See *People v Dillard*,

303 Mich App 372, 378; 845 NW2d 518 (2013) (explaining that the defendant's actions can provide circumstantial evidence of his intent to commit great bodily harm). Defendant repeatedly and brutally attacked the victim, including kicking her and stomping on her when she was on the ground, unable to defend herself. It is from this type of assault that a rational jury could have inferred that defendant intended to cause serious injury to the victim. See *Brown*, 267 Mich App at 147. Although defendant contends that Finley's injuries were not as serious as she described, "it is not necessary for any actual injury to occur[.]" as long as the defendant acted with the requisite intent. *Dillard*, 303 Mich App at 378. The repeated beatings were sufficient to enable the jury to find that defendant acted with the requisite intent. See *id.* at 378-379.

## II. SENTENCING GUIDELINES

Defendant next challenges the trial court's scoring of offense variables 3, 4, and 7 of the sentencing guidelines. "Determining whether a trial court properly scored sentencing variables is a two-step process." *People v Marshall*, 495 Mich 983; 843 NW2d 925 (2014). "Under the sentencing guidelines, the circuit court's factual determinations are reviewed for clear error and must be supported by a preponderance of the evidence." *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013). "The clear error standard asks whether the appellate court is left with a definite and firm conviction that a mistake has been made." *Marshall*, 495 Mich at 983. "Whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute, i.e., the application of the facts to the law, is a question of statutory interpretation, which an appellate court reviews de novo." *Hardy*, 494 Mich at 438.

### A. OV 3

Offense variable (OV) 3 considers physical injury to a victim. MCL 777.33(1). It is to be scored at 25 points if the injury was "[l]ife threatening or permanent[ly] incapacitating[.]" MCL 777.33(1)(c). The trial court assessed a score of 25 points, finding that the victim had sustained a permanently incapacitating injury. The victim testified that her eye was injured during the assault. Nine months later, she still had "a little black thing" in her eye "all the time" that interfered with her vision. Although the victim did not completely lose her sight in the injured eye, her vision was nonetheless impaired. The injury had existed for nine months and there was no indication that it would ever be resolved. This evidence supports the trial court's 25-point score for OV 3.

### B. OV 4

OV 4 considers "psychological injury to a victim." MCL 777.34(1). A score of 10 points is authorized when "[s]erious psychological injury requiring professional treatment occurred to a victim[.]" MCL 777.34(1)(a). The statute provides that the trial court is to score 10 points "if the serious psychological injury may require professional treatment. In making this determination, the fact that treatment has not been sought is not conclusive." MCL 777.34(2). "The trial court may assess 10 points for OV 4 if the victim suffers, among other possible psychological effects, personality changes, anger, fright, or feelings of being hurt, unsafe, or violated." *People v Armstrong*, 305 Mich App 230, 247; 851 NW2d 856 (2014). But there must be actual record evidence supporting a finding that the victim suffered psychological injury, and "[t]he trial court may not simply assume that someone in the victim's position would have

suffered psychological harm . . . .” *People v Lockett*, 295 Mich App 165, 183; 814 NW2d 295 (2012).

This was not, as defendant contends, a case where the trial court simply assumed that the victim suffered psychological harm; the record reveals several statements from the victim about the fear she experienced during and after the assaults. For instance, the victim testified that, following the second assault, she was “in a rage” “crying” and “scared.” She explained that the assault “scared me.” She explained that because of this fear, she was “just shaking” as she was driving to the gas station to wait for police officers to come. When she arrived at the gas station, she went inside to purchase cigarettes to calm her nerves because she was “scared,” “crying” and “nervous.” Finally, when the assaults were over, the victim explained that she had been “scared to death” by what she had experienced. Her expressions of fear were sufficient to support the trial court’s scoring decision. See *id.*

### C. OV 7

OV 7 takes into account “aggravated physical abuse” of the victim. MCL 777.37(1). A score of 50 points is warranted if “[a] victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense[.]” MCL 777.37(1)(a). The trial court assessed 50 points for OV 7 because “there was excessive brutality.” The phrase “excessive brutality” is not defined by statute, but this Court has explained that “excessive brutality means savagery or cruelty beyond even the ‘usual’ brutality of a crime.” *People v Glenn*, 295 Mich App 529, 533; 814 NW2d 686 (2012), rev’d on other grounds sub nom *People v Hardy*, 494 Mich 430; 835 NW2d 340 (2013). In *People v Wilson*, 265 Mich App 386, 396-398; 695 NW2d 351 (2005), this Court upheld a 50-point score for excessive brutality where the defendant beat the victim over a period of several hours, and the attack involved punching, kicking, slapping, and strangling the victim as well as assaulting her with broken glass and a knife.

The evidence established that defendant acted with savagery or cruelty that was far beyond the “usual” brutality of the sentencing offense. Defendant—without any apparent provocation—grabbed the victim by the throat and choked her to the point that she could not breathe during the first attack. After the victim managed to escape, defendant followed her and launched into another assault, this time grabbing the victim by her head, throwing her to the ground, and then repeatedly punching, kicking, and stomping on her while she was curled up on the ground, defenseless. Defendant stopped when bystanders intervened. After the victim escaped and was waiting for the police to arrive, defendant launched into yet another brazen attack on the victim, as he followed her to a public place and struck an individual who was trying to protect the victim in order to continue assaulting her. Defendant then subjected the victim to a vicious beating, punching her in the face until she fell to the floor, kicking her and stomping her to the point where she suffered a fractured bone in her face and damage to one of her eyes. The victim testified that defendant stomped her as if she were “an ant’ on the ground. He only stopped after being informed that surveillance cameras were likely filming the assault. As defendant left, he informed the victim, “I’m gonna kill your dumb ass[,] bitch.” This threat suggested to the victim, who had just endured multiple assaults, that defendant intended to harm her again in the future. See *People v McDonald*, 293 Mich App 292, 298-299; 811 NW2d 507 (2011) (explaining that the trial court properly scored OV 50 based, in part, on the defendant’s

threat that he could find the victim again in the future). In short, defendant continued to seek to inflict pain on the victim after his previous efforts had been thwarted, either by the victim's escape or the intervention of bystanders, and all three of his attacks were vicious assaults on the victim. His conduct was brutal, and the repeat nature of his attacks shows that his conduct was excessively so. Therefore, the trial court did not err in assessing 50 points for OV 7.

Affirmed.

/s/ Michael J. Riordan

/s/ Jane M. Beckering

/s/ Mark T. Boonstra