

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

HAMZA GIBSON,

Defendant-Appellant.

UNPUBLISHED

July 19, 2011

No. 297814

Wayne Circuit Court

LC No. 09-030022-01-FH

Before: BORRELLO, P.J., and METER and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of assault with intent to murder (AWIM), MCL 750.83, assault with intent to do great bodily harm less than murder (AWIGBH), MCL 750.84, and aggravated domestic violence, MCL 750.81a(2). Defendant was sentenced to concurrent prison terms of 13 to 25 years for the AWIM conviction, 3 to 10 years for the AWIGBH conviction, and 93 days for the domestic violence conviction. We affirm in part and vacate in part.

This case arises out of an incident on April 12, 2009, in which defendant violently attacked and injured the victim.

Defendant first argues that his convictions for AWIM and AWIGBH arose from a single incident involving one victim and, therefore, violate the constitutional protection against double jeopardy. The prosecutor concedes that defendant's double jeopardy rights were violated. We agree.

Defendant's convictions of both AWIM and AWIGBH violate the double jeopardy protection against multiple punishments for the same offense under the "same elements" test of *Blockburger v United States*, 284 US 299, 304; 52 S Ct 180; 76 L Ed 306 (1932). *People v Nutt*, 469 Mich 565, 576; 677 NW2d 1 (2004). Because "[t]he remedy for conviction of multiple offenses in violation of double jeopardy is to affirm the conviction of the greater charge and to vacate the conviction on the lesser charge," *People v Meshell*, 265 Mich App 616, 633-634; 696 NW2d 754 (2005), defendant's conviction of and sentence for AWIGBH must be vacated.

Defendant next argues there was insufficient evidence to find him guilty of AWIM because the proofs demonstrated that he had no intent to murder the victim. We disagree.

When deciding a claim of insufficient evidence, an appellate 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 offense were proved beyond a reasonable doubt.’” *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000), quoting *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended in part 441 Mich 1201 (1992). “The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *Id.* at 400. Further, the reviewing court must not interfere with the trier of fact’s role “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). Similarly, questions pertaining to the credibility of witnesses should be left to the trier of fact to resolve. *Wolfe*, 440 Mich at 515.

To convict a defendant of AWIM, the prosecutor must prove the following three elements: “(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder.” *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). AWIM is a specific intent crime. *People v Triplett*, 105 Mich App 182, 187; 306 NW2d 442 (1981). Circumstantial evidence and the reasonable inferences that arise therefrom can form satisfactory proof of the elements of the crime. *McRunels*, 237 Mich App at 181. “The intent to kill may be proved by inference from any facts in evidence. Because of the difficulty in proving an actor’s state of mind, minimal circumstantial evidence is sufficient.” *Id.* (citation omitted). “Even in a case relying on circumstantial evidence, the prosecution need not negate every reasonable theory consistent with the defendant’s innocence, but need merely introduce evidence sufficient to convince a reasonable jury in the face of whatever contradictory evidence the defendant may provide.” *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995).

Viewed in a light most favorable to the prosecution, the evidence in this instant case was sufficient to establish that defendant had the intent to murder the victim. It is undisputed that defendant physically assaulted the victim. The victim testified that defendant confronted her outside her home and demanded to know why she had called his probation officer. Defendant then chased the victim around his vehicle and, after catching her, punched her multiple times in her face with his fists while yelling, “Die Bitch Die,” or something similar. At some point, the victim became unconscious as a result of the beating from defendant. A friend of the victim who witnessed the entire incident confirmed that defendant punched the victim in the face multiple times with his fists while saying, “Die, Bitch, Die.” The friend also testified that defendant stomped on the victim five or six times while she was on the ground. The victim suffered substantial injuries to her face, including a broken nose, a badly swollen face, two black eyes, and a lacerated bottom lip that required stitches. Photographs of the victim’s injuries were admitted into evidence. Defendant ceased the assault only when two women ran toward the scene. The women stopped and backed away when defendant lifted his shirt and displayed what appeared to be a black gun tucked into his pants. Direct and circumstantial and direct evidence showed that the victim’s injuries were not minor, as defense counsel suggested at trial. Counsel minimized the severity of her injuries by asserting that the prosecution demonstrated “at best” that defendant hit the victim several times and kicked her, and that plaintiff had a split lip that required a “few” stitches and black eyes. To the contrary, the testimony demonstrated that the victim experienced a violent attack in the face of being told to “Die, Bitch, Die,” and that her

injuries were so serious that she was knocked unconscious and had to be rushed to the hospital. Based on the nature of defendant's assault, the words he uttered to the victim, the severity of her injuries and defendant's departure from the scene without aiding her, a reasonable juror could infer that defendant had the specific intent to kill the victim. The fact that defendant did not succeed in ending the victim's life through his abusive acts does not invalidate this inference.

Defendant next argues that the trial court speculated that he might have murdered the victim by striking her in the face multiple times. Defendant maintains that the "speculation" is not a finding of fact. We disagree.

When a trial judge sits as a trier of fact, the judge's role is more circumscribed and the possibility of an inappropriate compromise judgment is significantly reduced or eliminated. The judge's duty is to find facts based on the evidence presented and to apply the law to those facts. This duty is reinforced by the requirements that the judge articulate the facts found and the conclusions of law upon which the judgment is based. [*People v Casal*, 412 Mich 680, 689; 316 NW2d 705 (1982).]

Here, the trial court based its ruling on the evidence presented, not on speculation. It thoroughly articulated the facts centering on defendant's assault of the victim and the conclusions of law upon which it based its judgment. *Id.* The trial court also determined that the prosecution's witnesses were credible and relied on their testimony rather than speculation when making its ruling. *Wolfe*, 440 Mich at 516.

Defendant further asserts that the trial court found an intent to kill in a hypothetical situation, one in which the victim would have been murdered but for the intervention of two ladies. Defendant is mistaken. The trial court reached its finding of facts on the evidence, not a hypothetical scenario.

The victim's friend testified that two women observed the assault on the victim and ran toward the scene. They backed away and raised their hands up at defendant's display of what appeared to be a gun. At that point, defendant stopped his assault on the victim, entered his van, and sped off. It is reasonable to infer from defendant's actions that the appearance and intervention of the two ladies halted the attack on the victim and staved off the possibility of further beatings and possible imminent death. A rational trier of fact could infer from defendant's actions and the circumstances surrounding his assault of the victim that he had the specific intent to murder the victim.

Defendant's convictions of and sentences for AWIM and aggravated domestic violence are affirmed. His conviction of and sentence for AWIGBH are vacated.

/s/ Stephen L. Borrello
/s/ Patrick M. Meter
/s/ Douglas B. Shapiro