

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRIN A. KRAMER,

Defendant-Appellant.

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UNPUBLISHED

June 25, 1996

No. 181672

LC No. 94-003353-FH

Before: Sawyer, P.J., and Neff and R.D. Gotham,\* JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of assault with intent to murder, MCL 750.83; MSA 28.278, and felonious assault, MCL 750.82; MSA 28.277. Thereafter, defendant pled guilty to the charge of habitual offender (fourth offense). MCL 769.12; MSA 28.1084. Defendant was sentenced to twenty to forty years in prison for the assault with intent to murder and the habitual offender conviction and to a concurrent ten- to fifteen-year sentence for the felonious assault conviction. Defendant appeals and we affirm.

Defendant argues that there was insufficient evidence to find him guilty of assault with intent to murder and felonious assault. Specifically, he argues that the evidence failed to show that he was capable of forming the specific intent necessary to commit the crimes. We disagree.

The record reflects that the defendant moved for a directed verdict both at the close of the prosecution's case and at the close of the proofs. We view this issue by viewing the evidence in the light most favorable to the prosecutor and determining whether a rational trier of fact could find the essential elements of the crime proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979). Defendant does not challenge the jury's determination that he committed the crime. Rather, he contends that due to his level of intoxication, he was unable to form the requisite specific intent to commit the crimes.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Voluntary intoxication is a defense to specific intent crimes when the defendant's degree of intoxication was so great as to render him incapable of forming the requisite specific intent. *People v Savoie*, 419 Mich 118, 134; 349 NW2d 139 (1984). The question whether a defendant was so intoxicated as to be unable to form a requisite intent is one of fact for the jury. *People v Acosta*, 143 Mich App 95, 103; 371 NW2d 484 (1985). We are satisfied that there was ample evidence to permit the jury to reject defendant's intoxication defense.

The bar employee who served defendant testified that defendant only received between six to ten drinks and that defendant was able to handle his money without any difficulty. Further, all of the police officers who dealt with defendant on the night in question testified that while it was obvious defendant had been drinking, defendant nevertheless understood everything they said to him. We further note that defendant was able to jump over two fences and go down several flights of stairs without any apparent difficulty while he was being chased. When apprehended, he was also able to ask to be released, saying that he would never do it again and also offered the people chasing him money to let him go. On the basis of this evidence, the jury could have concluded beyond a reasonable doubt that defendant was capable of forming the specific intent necessary to commit the crimes with which he was charged.

Defendant next argues that the trial court erred in refusing his request for a diminished capacity instruction. Jury instructions are reviewed in their entirety to determine if reversal is required. *People v Caulley*, 197 Mich App 177, 184; 494 NW2d 853 (1992). The failure to give a requested instruction is error requiring reversal only if the requested instruction (1) is substantially correct, (2) was not substantially covered in the charge given to the jury, and (3) concerns an important point in trial so that the failure to give it seriously impairs the defendant's ability to effectively present a given defense. *People v Moldenhauer*, 210 Mich App 158, 159; 533 NW2d 9 (1995).

While defendant did supply sufficient evidence supporting his request for a diminished capacity instruction, the failure to give such instruction in this case was harmless error. The jury was informed that it should consider whether defendant's mind was so overcome by alcohol that it could not have formed the necessary intent. This instruction significantly protected defendant's rights because his theory of diminished capacity due to intoxication was presented to the jury. Therefore, reversal is not required. *Moldenhauer, supra*.

Affirmed.

/s/ David H. Sawyer

/s/ Janet T. Neff

/s/ Roy D. Gotham