STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM NICHOLAS POWELL,

Defendant-Appellant.

UNPUBLISHED
November 8, 1996

No. 179551
LC No. 93-010495

Before: Wahls, P.J., and Fitzgerald and L.P. Borrello,* JJ.

PER CURIAM.

A jury convicted defendant of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. Defendant was sentenced to a term of six to ten years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court clearly erred when it denied his motion to suppress his statement to the police. We disagree. When reviewing a trial court's determination of voluntariness, this Court must examine the entire record and make an independent determination. *People v Robinson*, 386 Mich 551, 557; 194 NW2d 709 (1972); *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965); *People v Brannon*, 194 Mich App 121, 131; 486 NW2d 83 (1992). Deference is given to the trial court's assessment of the weight of the evidence and credibility of the witnesses, and the trial court's findings will not be reversed unless they are clearly erroneous. *People v Young*, 212 Mich App 630, 634; 538 NW2d 456 (1995).

The trial court did not err when it denied defendant's motion to suppress his statements to Officer Young. Officer Young did not question defendant at all. Officer Young merely placed defendant in his car with the intention of taking defendant to the police station for defendant's protection. When defendant began speaking of his own accord, Officer Young informed defendant of his *Miranda*[1] rights. Defendant, however, chose to ignore Officer Young's warnings and continued to speak. Therefore, there was no "interrogation" which would require the giving of *Miranda* warnings. *People v Honeyman*, 215 Mich App 687, 694-696; 546 NW2d 719 (1996); *People v Anderson*,

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

209 Mich App 527, 532-533; 531 NW2d 780 (1995); Neither did the trial court clearly err in its finding that defendant's statements were given voluntarily. See *People v Garwood*, 205 Mich App 553, 558-559; 517 NW2d 843 (1994). The trial court properly denied defendant's motion.

Next, defendant argues that the trial court abused its discretion when it admitted evidence of defendant's prior acts of domestic violence. Assuming arguendo that the prosecutor's questioning of the complainant's daughter went beyond the proper scope of rebuttal, any error was harmless. Reversible error may not be predicated on an evidentiary ruling unless a substantial right was affected. MRE 103(a); *People v Travis*, 443 Mich 668, 686; 505 NW2d 563 (1993). Here, defendant's witness, Dr. Van Horn, testified that she knew of defendant's abusive relationship and had questioned both defendant and the complainant about it. Thus, that evidence would have been before the jury even if the trial court had excluded the references to it made by the complainant's daughter. Reversal is not required. *Travis*, *supra*, p 686.

Defendant also contends that the trial court erred when it denied defendant's motion for a directed verdict on the charge of assault with intent to commit murder because there was insufficient proof of a specific intent to kill. We disagree. When ruling on a motion for a directed verdict, the court must consider the evidence presented by the prosecutor up to the time the motion was made in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the charged crime were proven beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

Here, there was evidence that defendant, after conducting a heated argument with the complainant, got into his van, and turned on the engine. Defendant reached out of the van and grabbed the complainant by her neck and drove off at a high rate of speed while the complainant hung on to the outside of the van. Defendant sped around a corner and smashed into a pole, amputating the complainant's arm and nearly severing her leg. As well, there was evidence that defendant got out of the van and began hitting or kicking the complainant as she lay injured on the ground.

When looking at the evidence in a light most favorable to the prosecution, there was sufficient evidence to support a charge of assault with intent to commit murder. Defendant's outrageous conduct could have resulted in the death of the complainant had he been successful. *People v Lugo*, 214 Mich App 699, 710; 542 NW2d 921 (1995); see also *People v Sheets*, 138 Mich App 794, 799; 360 NW2d 301 (1984); *Hunter v State*, 468 SW2d 96, 99 (Tex App, 1971). As such, the trial court did not err in denying defendant's motion for a directed verdict. *Jolly*, *supra* at 466. In addition, because there was sufficient evidence to support a finding that defendant assaulted the complainant with the intent to kill her, the trial court did not err in instructing the jury as to that charge. See *People v Vail*, 393 Mich 460; 227 NW2d 535 (1975); *People v Ellis*, 174 Mich App 139, 145-146; 436 NW2d 383 (1988).

Defendant also maintains that there was insufficient evidence to support his conviction of assault with intent to do great bodily harm because there was no showing that defendant intended to injure the complainant. We disagree. In a challenge to a conviction based on the sufficiency of the evidence presented, this Court must view the evidence in a light most favorable to the prosecution and determine

whether a rational trier of fact could find that all the elements of the crime charged were proven beyond a reasonable doubt. *People v McCrady*, 213 Mich App 474, 484; 540 NW2d 718 (1995).

Here, there was sufficient evidence to support defendant's conviction of assault with intent to do great bodily harm where defendant drove his van away at a fairly high rate of speed while the complainant was hanging on to the outside if it. Defendant's intent to injure the complainant can be inferred from the fact that he recklessly drove his vehicle while a person was clinging to the outside of it. *People v Reddick*, 187 Mich App 547, 551; 468 NW2d 278 (1991). The fact that there was testimony that the collision was an accident and that defendant was unable to form the intent to injure the complainant went to the credibility of the witnesses and the weight of the evidence presented, questions which are for the jury to resolve. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992); *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). Furthermore, the prosecutor was not required to negate every reasonable theory of innocence, but had to only prove her own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provided. *People v Carson*, 189 Mich App 268, 269; 471 NW2d 655 (1991). When looking at the evidence presented in a light most favorable to the prosecution, there was sufficient evidence to support defendant's conviction. *McCrady*, *supra*, p 484. Similarly, the great weight of the evidence did not require the trial court to grant defendant a new trial sua sponte. See *Severn v Sperry Corp*, 212 Mich App 406, 412-413; 538 NW2d 50 (1995); *People v Langley*, 187 Mich App 147, 150; 466 NW2d 724 (1991).

Affirmed.

/s/ Myron H. Wahls
/s/ E. Thomas Fitzgerald
/s/ Leopold P. Borrello

[1] *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602, 1612; 16 L Ed 2d 694 (1966).