STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT COLEMAN, a/k/a ROBERT MARCUS COLEMAN,

Defendant-Appellant.

UNPUBLISHED
April 25, 1997

No. 191262
Recorder's Court
LC No. 95-007496

Before: Young, P.J., and Gribbs and S. J. Latreille,* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of assault with intent to commit great bodily harm less than murder, MCL 750.84; MSA 28.279, and two counts of felonious assault, MCL 750.82; MSA 28.277. Defendant was sentenced to thirty to one hundred twenty months on the assault with intent to commit great bodily harm less than murder conviction, and one to four years on each of the felonious assault convictions. We affirm.

Defendant first argues on appeal that he was denied the effective assistance of counsel because trial counsel failed to effectively cross-examine the prosecution's witnesses and failed to call additional defense witnesses to support defendant's claim of intoxication We disagree.

Effective assistance of counsel is presumed. A defendant bears the burden of proving that counsel's assistance was ineffective. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994), citing *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). To establish that the right to effective assistance of counsel was so undermined that it justifies reversal of an otherwise valid conviction, a defendant must show: (1) that counsel's performance was deficient, falling below an objective standard of reasonableness, and (2) that the representation so prejudiced the defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994); *People v Nantelle*, 215 Mich App 77, 87; 544 NW2d 667 (1996). The defendant must show that he was denied a fair trial with a reliable result and must also show a reasonable probability

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

that, but for counsel's unprofessional errors, the result would have been different. *People v Johnnie Johnson*, 451 Mich 115, 124; 545 NW2d 637 (1996).

The decision whether to call witnesses is a matter of trial strategy. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994); *People v Julian*, 171 Mich App 153, 159; 429 NW2d 615 (1988). The decision to cross-examine a witness is also a matter of trial strategy. *People v Hopson*, 178 Mich App 406, 412; 444 NW2d 167 (1989). In order to overcome the presumption of sound trial strategy, the defendant must show that his counsel's failure to call additional witnesses deprived him of a substantial defense that would have affected the outcome of the proceeding. *Daniel, supra.* This Court is reluctant to second guess trial counsel in matters of trial strategy. *People v Harrison*, 163 Mich App 409, 415; 413 NW2d 813 (1987).

We hold that defendant has failed to overcome the presumption that his trial counsel's failure to call additional witnesses or more effectively cross-examine the prosecution's witnesses was sound trial strategy. A review of the record demonstrates that defense counsel asked each prosecution witness whether defendant appeared to be intoxicated on the evening in question, and elicited positive responses from each witness in support of his intoxication defense. Furthermore, defendant testified on his own behalf and indicated that he was intoxicated on the evening in question and that he had no recollection of any of the events that occurred. However, the testimony given by the prosecution witnesses described defendant's actions in full detail. Since this Court is reluctant to second guess trial counsel in matters of trial strategy, *Harrison, supra*, we conclude that defendant has failed to show that counsel's alleged errors deprived him of a substantial defense which would have affected the outcome of the proceeding. *Daniel, supra.*

Defendant next argues that insufficient evidence was presented to support his conviction for assault with intent to commit great bodily harm less than murder. We disagree. In determining whether sufficient evidence has been presented to sustain a conviction, this 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 crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 516 n 6; 489 NW2d 748 (1992); *People v Hampton*, 407 Mich 354, 366; 285 NW2d 284 (1979), cert den 449 US 885; 101 S Ct 239; 66 L Ed 2d 110 (1980).

The elements of assault with intent to commit great bodily harm less than murder are: (1) an attempt or offer with force or violence to do corporal hurt to another (an assault) (2) coupled with an intent to do great bodily harm less than murder. *People v Harrington*, 194 Mich App 424, 428; 487 NW2d 479 (1992). Assault with intent to commit great bodily harm less than murder is a specific intent crime. *People v Mack*, 112 Mich App 605, 611; 317 NW2d 190 (1981). Voluntary intoxication is a defense to a crime requiring specific intent. *People v Korona*, 119 Mich App 369, 371; 326 NW2d 143 (1982). The proper standard to be applied when a defendant raises a defense of intoxication is whether the degree of intoxication was so great as to render the accused "incapable of entertaining the intent". *People v Savoie*, 419 Mich 118, 134; 349 NW2d 139 (1984).

Viewing the evidence in a light most favorable to the prosecution, we hold that a rational trier of fact could have found beyond a reasonable doubt that defendant was capable of entertaining the intent necessary to commit assault with intent to commit great bodily harm less than murder. Defendant had a normal conversation with Linda immediately prior to attacking Angela. While attacking her with the knife, defendant told Angela that she could not leave him and that he would not let her leave him. Furthermore, defendant's physical acts demonstrated that he was capable of forming the specific intent to assault Angela with the intent to commit great bodily harm less than murder. All three witnesses testified that defendant continued to stab at Angela with the knife while they were struggling in the bathroom, and after they had exited the bathroom, defendant continued to fight Angela with his fists. Defendant returned to Angela's home after he left the first time and ripped the window screen off of her bedroom window. On his third return visit, he busted a window out of Linda's car, and on his fourth and final visit, he unsuccessfully atttempted to kick in the front door. A rational trier of fact could find beyond a reasonable doubt, based on these facts, that defendant had the specific intent to assault Angela with the intent to commit great bodily harm less than murder.

Lastly, defendant argues that insufficient evidence was presented to sustain his convictions for felonious assault. We disagree. To convict a defendant of felonious assault, the prosecution must prove, among other elements, that the defendant either intended to injure the victim or intended to put the victim in reasonable apprehension of an immediate battery or injury. *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985). Felonious assault is a specific intent crime. *Korona, supra.*

Viewing the evidence in a light most favorable to the prosecution, we hold that the prosecution presented sufficient evidence of defendant's specific intent to commit felonious assault. During the altercation in the bathroom, defendant swung the knife at Linda and cut her hand. He also pushed her into the tub through the shower door, which fell onto her and injured her. Defendant also swung the knife at Collier and injured him on the hand as well. Defendant would have stabbed Collier in the head or chest had Collier not ducked. When pushed into the dining room, defendant started swinging at Linda and Collier with his fists. Furthermore, during defendant's repeated return trips to the home, defendant damaged Linda's property, including Angela's bedroom window screen, Linda's car window and the front door. A rational trier of fact could find beyond a reasonable doubt, based upon these facts, that defendant was capable of entertaining the intent necessary to commit felonious assault on Linda and Collier.

Affirmed.

/s/ Robert P. Young, Jr.
/s/ Roman S. Gribbs
/s/ Stanley J. Latreille