

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMIE LEE HOFFNER,

Defendant-Appellant.

UNPUBLISHED

June 10, 2010

No. 289457

Kent Circuit Court

LC No. 07-012625-FC

Before: OWENS, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of second-degree murder, MCL 750.317, and witness intimidation, MCL 750.122(6), (7)(c). Defendant was sentenced as a fourth offense habitual offender, MCL 769.12, to life imprisonment for the second-degree murder conviction and 10 to 15 years' imprisonment for the witness intimidation conviction. We affirm defendant's convictions and sentences but remand for correction of the judgment of sentence.

Defendant's convictions arise from the stabbing death of Robert Goss. Goss was in a park drinking beer with several friends when defendant approached the group, while holding a bottle of gin. Defendant began to harass Goss and his friends by pouring gin on the head of one individual and knocking Goss' hat off. Goss verbally indicated to defendant to cease the harassment. Goss and his friends then began to walk out of the park when defendant used a pocketknife to stab Goss in the neck. Goss expired at the scene due to blood loss from a severed jugular vein.

On appeal, defendant first contends that insufficient evidence was presented to demonstrate he possessed the requisite intent to sustain his convictions for second-degree murder and witness intimidation. Specifically, defendant contends that his own intoxication and lack of mental clarity or coherence at the time of the assault precluded a finding that he had the requisite degree of malice or intent. We note at the outset that defendant's mental status was evaluated and it was determined that defendant was competent to stand trial. Defendant does not challenge the trial court's competency determination.

We review a challenge to the sufficiency of the evidence de novo. *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006). Our Court reviews a challenge to the sufficiency of the evidence in the light most favorable to the prosecution in order to determine whether a

rational trier of fact could find that the essential elements of the charged crime was proven beyond a reasonable doubt. *In re Contempt of Henry*, 282 Mich App 656, 677; 765 NW2d 44 (2009). In addition:

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. The scope of review is the same whether the evidence is direct or circumstantial. “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” [*People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000), quoting *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).]

“In reviewing the sufficiency of the evidence, this Court must not interfere with the jury’s role as the sole judge of the facts.” *People v Meshell*, 265 Mich App 616, 619; 696 NW2d 754 (2005).

The elements of second-degree murder include: “(1) a death, (2) the death was caused by an act of the defendant, (3) the defendant acted with malice, and (4) the defendant did not have lawful justification or excuse for causing the death.” *People v Smith*, 478 Mich 64, 70; 731 NW2d 411 (2007), citing *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998). The term “malice” has been defined “as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm.” *Id.* In addition:

Malice may be inferred from evidence that the defendant ‘intentionally set in motion a force likely to cause death or great bodily harm.’ “The offense of second-degree murder does not require an actual intent to harm or kill, but only the intent to do an act that is in obvious disregard of life-endangering consequences.” [*People v Roper*, 286 Mich App 77, 84; 777 NW2d 483 (2009) (internal citations omitted).]

Consequently, intoxication does not comprise a defense to a charge of second-degree murder. *People v Langworthy*, 416 Mich 630, 651; 331 NW2d 171 (1982).

In the circumstances of this case, sufficient evidence existed to sustain defendant’s jury conviction of second-degree murder. Defendant approached Goss and his friends in the park and attempted to instigate an altercation by pouring alcohol and making physical contact with the victim. When the victim attempted to retreat, defendant pulled a knife and stabbed Goss in the neck. The intent to kill can be inferred from the facts in evidence, which include the use of a dangerous weapon, the type of injuries inflicted, and a defendant’s conduct. *People v Mills*, 450 Mich 61, 71; 537 NW2d 909 (1995), mod 450 Mich 1212 (1995); *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999); *People v Ray*, 56 Mich App 610, 615; 224 NW2d 735 (1974). A pocketknife or folding knife can be construed as a dangerous weapon if it is used to accomplish an assault and if it is capable of inflicting serious injury. *People v Brown*, 406 Mich 215, 220-221; 277 NW2d 155 (1979). Based on the inherent difficulty in establishing or proving a defendant’s state of mind, only minimal circumstantial evidence is required. *McRunels*, 237 Mich App at 181; *Ray*, 56 Mich App at 615. As such, given the weapon used and the location of the injury inflicted to Goss, coupled with defendant’s aggressive behavior in approaching the victim and his friends, permits an inference of defendant’s malicious intent. *Roper*, 286 Mich

App at 84. Although defendant appeared confused and incoherent after the assault, he was deemed competent to stand trial. Further, during questioning by police, defendant's responses suggest he had some awareness of his actions by both denying his culpability and suggesting an alternative sequence of events to suggest that the stabbing was an accident. To the extent defendant implies he was intoxicated at the time of the offense and, therefore, incapable of the requisite intent, it does not comprise a defense.

Defendant was also convicted of witness intimidation. Specifically, MCL 750.122(6) provides, in relevant part: "A person shall not willfully impede, interfere with, prevent, or obstruct or attempt to willfully impede, interfere with, prevent, or obstruct the ability of a witness to attend, testify, or provide information in or for a present or future official proceeding." The statutory provisions seeking to preclude witness intimidation "identify and criminalize the many ways individuals can prevent or attempt to prevent a witness from appearing and providing truthful information in some sort of official proceeding." *People v Greene*, 255 Mich App 426, 438; 661 NW2d 616 (2003). Evidence was presented that defendant, following the stabbing of Goss, made verbal comments to two individuals that could be construed as threatening in order to "prevent" or "interfere" with the provision of testimony or information by these witnesses in a subsequent proceeding. Although the witnesses could not recall the specific words used by defendant, the meaning conveyed, context and timing of the comments by defendant were of a sufficiently threatening nature to be construed by the jury as an attempt to intimidate the witnesses. Again, defendant's voluntary intoxication does not constitute a defense. See MCL 768.37(1), (2).

Finally, defendant contends that a photograph exhibited at trial showing the victim with his daughter at a birthday party was improperly admitted into evidence. Specifically, defendant asserts the trial court abused its discretion in admitting the photograph because it was proffered merely to elicit juror sympathy and had no probative value. This Court reviews the admission of evidence for an abuse of discretion. *People v Johnson*, 474 Mich 96, 99; 712 NW2d 703 (2006). An abuse of discretion is found to have occurred "when the trial court chooses an outcome falling outside [the] principled range of outcomes." *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

The decision to admit or exclude photographic evidence is solely within the discretion of the trial court. *Mills*, 450 Mich at 76. Consistent with the admission of any other form of evidence, a photograph must be deemed relevant to be admissible. *People v Unger*, 278 Mich App 210, 247; 749 NW2d 272 (2008); MRE 401. However, even relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. *Mills*, 450 Mich at 74-76; MRE 403.

There is only one challenged photograph, which depicted the victim with his child at a birthday party. In the circumstances of this case, the victim's size or stature was relevant for the jury to consider when evaluating defendant's contention regarding the events that led up to the stabbing. Further, the photograph served to corroborate testimony regarding the victim's size and to demonstrate the unlikelihood that he was the instigator of the confrontation with defendant. There is nothing in the record to suggest that this one photograph was given undue or preemptive weight by the jury. As such, the trial court's admission of the photograph did not comprise an abuse of discretion.

We note, *sua sponte*, that defendant's judgment of sentence improperly reflects a conviction of "homicide – open murder – statutory short form." As such, we remand this case to the trial court solely for the ministerial purpose of correction of the judgment of sentence.

Affirmed, but remanded for correction of judgment of sentence. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Peter D. O'Connell
/s/ Michael J. Talbot