

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DUJUAN RIO TURNER,

Defendant-Appellant.

UNPUBLISHED

April 11, 1997

No. 186053

Detroit Recorder's Court

LC No. 94-000493

Before: Hood, P.J., and Saad and T.S. Eveland,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, two counts of assault with intent to commit murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to life imprisonment on the murder conviction and each of the assault convictions, and a mandatory two years for the felony-firearm conviction. Defendant appeals as of right. We affirm.

I

Defendant first argues that the trial court improperly instructed the jury about one of the three alternative states of mind required to convict him of second-degree murder. We disagree.

We review jury instructions in their entirety to determine whether, even if somewhat imperfect, the instructions fairly present the issues to the jury and adequately protected the defendant's rights. *People v Moldenhauer*, 210 Mich App 158, 159; 533 NW2d 9 (1995). Here, the trial court gave an instruction that was virtually identical to CJI2d 16.5. That instruction appropriately instructed the jury that, provided the other elements were met, defendant could be found guilty of second-degree murder if he acted with (1) an intent to kill, (2) an intent to do great bodily harm, or (3) "wanton and willful disregard of the likelihood that the natural tendency of said act would cause death or great bodily

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

harm.” Furthermore, contrary to defendant’s assertion, the “act” does not have to be wanton and willful; what has to be wanton and willful is defendant’s “disregard” for the fact that the natural tendency of his actions might result in death or great bodily harm. *People v Lewis*, 168 Mich App 255, 270; 423 NW2d 637 (1988). There was no error.

II

Defendant next contends that the trial court violated the principle of proportionality when it departed upward from the sentencing guidelines recommendation¹ to impose life sentences for his second-degree murder and his two assault with intent to commit murder convictions. We disagree.

We review a claim of sentence disproportionality for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The sentencing court may give added emphasis to particular factors that were inadequately accounted for in formulating the guidelines. See *People v Houston*, 448 Mich 312, 320-321; 532 NW2d 508 (1995).

Here, the trial court did not err in departing from the guidelines range and sentencing defendant to life imprisonment on his second-degree murder and two assault with intent to commit murder convictions. There was sufficient evidence from which the trial court could have concluded that defendant’s actions were premeditated. Defendant carried an automatic rifle from his home on the west side of Detroit to an east Detroit home owned by people he concededly did not know and, once there, he fired the gun several times into their home. Additionally, there was evidence that the gun used by defendant was a semi-automatic or automatic assault rifle. Moreover, defendant’s actions are rendered more appalling by the fact that he committed the shooting after having determined that there were people in the house. Further, there were thirteen people in the house and any one of them could have been hit by a bullet from defendant’s indiscriminately-fired gun. Although these factors are all accounted for in the guidelines, we conclude that the scoring of these factors in the guidelines fails to properly account for the egregious circumstances under which this shooting took place. Therefore, the life sentences imposed for defendant’s second-degree murder and two assault convictions satisfy the principle of proportionality and thus, the trial court did not abuse its discretion.

III

Finally, defendant contends that there was insufficient evidence to convict him of the two counts of assault with intent to commit murder, particularly that he possessed the requisite specific intent to kill.

“The elements of assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder.” *People v Lugo*, 214 Mich App 699, 710; 542 NW2d 921 (1995). Here, there was testimony that one of the men with defendant knocked on the front door, asked for the father’s son and daughter, and was told by the father that they were not home. Thus, it is reasonable to conclude that defendant, who stood not too far away, knew that at least one person was home. Further, that the crimes took place between 10:45 p.m. and 11:00 p.m. add to the reasonable inference that people were home at the time. In addition, there was testimony that defendant was seen carrying an automatic assault rifle and that he fired it at the house

more than just a few times. Moreover, there was testimony that some of the bullets traveled through the windows where the parents were standing. Thus, the fact that defendant knowingly took an automatic weapon and fired it several times into a house that he knew to be occupied by at least one person was sufficient evidence from which a rational trier of fact could infer that defendant intended to kill the parents. Accordingly, defendant's convictions of two counts of assault with intent to commit murder was supported by sufficient evidence.

Affirmed.

/s/ Harold Hood

/s/ Henry William Saad

/s/ Thomas S. Eveland

¹ The recommended minimum sentencing range was one hundred twenty to three hundred months, as calculated on defendant's second-degree murder conviction.