

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

MICHAEL PEAVLER,

Defendant-Appellant.

UNPUBLISHED

August 7, 2001

No. 223537

Livingston Circuit Court

LC No. 98-010586-FC

Before: Hood, P.J., and Whitbeck, and Meter, JJ.

PER CURIAM.

Defendant, who knifed his estranged wife, appeals by right from his conviction by a jury of assault with intent to commit murder, MCL 750.83. The trial court sentenced him to forty to sixty years' imprisonment. We affirm defendant's conviction and sentence.

Defendant first argues that the prosecutor presented insufficient evidence to support his conviction. In reviewing the sufficiency of the evidence supporting a conviction, this Court views the evidence in the light most favorable to the prosecutor and determines whether a 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, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

The essential elements of assault with intent to commit murder are: (1) an assault, (2) with the intent to kill, (3) that, if successful, would make the killing murder. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Here, defendant contends that the prosecutor failed to prove that he possessed the intent to kill at the time he injured the victim. We disagree with this contention.

Because proving a defendant's state of mind is inherently difficult, an intent to kill may be proven by reasonable inferences drawn from any fact in evidence. *Id.* Here, the following evidence and accompanying inferences supported the jury's finding that defendant intended to kill the victim: (1) the victim's testimony that prior to the knifing, defendant choked her around the neck so severely that she "saw . . . black dots and it started getting dark"; (2) the victim's testimony that defendant then pushed in the door to the bathroom where she had fled, pushed her into the bathtub, and slashed her, mostly in the throat area, with a utility knife that he did not

normally carry; (3) the victim's testimony that based on defendant's actions and appearance, she thought he was trying to cut her jugular vein; (4) the victim's testimony that one of the wounds extended for almost the full circumference of her neck; (5) the treating physician's testimony that the victim's wounds were potentially life-threatening; (6) the treating physician's testimony that the wounds extended to within one centimeter of the victim's major artery or jugular vein; and (7) a psychiatrist's testimony that the antidepressant defendant was taking at the time of the incident would not have caused him to violently attack the victim. This evidence provided ample support for the jury's conclusion regarding defendant's intent at the time of the slashing. See, e.g., *People v Mills*, 450 Mich 61, 71; 537 NW2d 909, modified 450 Mich 1212 (1995) (evidence of injury is admissible to show a defendant's intent to kill), and *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997) (in assessing a defendant's challenge to the sufficiency of the evidence, all conflicts in the evidence must be resolved in favor of the prosecution). Moreover, we note that the fact that defendant ceased the attack before the victim died does not negate the jury's finding that he did in fact possess the intent to kill at an earlier point.

Defendant next claims that the trial court imposed a disproportionate sentence. We review a trial court's sentencing decisions for an abuse of discretion. See *People v Houston*, 448 Mich 312, 319, 321; 532 NW2d 508 (1995). A trial court abuses its discretion when it violates the principle of proportionality, which mandates that the sentence imposed be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Bennett*, 241 Mich App 511, 515; 616 NW2d 703 (2000).

Here, the sentencing guidelines' range was eight to twenty years' imprisonment. The trial court upwardly departed from this range by sentencing defendant to forty to sixty years' imprisonment. A departure from the guidelines should alert an appellate court to the possibility that the trial court violated the principle of proportionality and warrants careful scrutiny on appeal. *Bennett*, *supra* at 516; *People v Rockey*, 237 Mich App 74, 79; 601 NW2d 887 (1999).

After giving defendant's sentence careful scrutiny, we are convinced that the trial court did not abuse its discretion in imposing the sentence. The trial court enumerated its reasons for departing from the guidelines both on the record and in the sentencing information report. It noted that (1) the attack was particularly vicious and unexplained, (2) there was an uncharged choking incident that preceded the knifing, (3) defendant had a prior relationship with the victim, (4) defendant placed his wife and children in great fear, and (5) defendant scored seventy points in the offense variables and the grid only accounts for fifty points. These circumstances justified the departure from the sentencing guidelines. See, e.g., *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990) (prior relationship between the parties can be a very aggravating circumstance); *People v Coulter (After Remand)*, 205 Mich App 453, 456; 517 NW2d 827 (1994) (uncharged conduct is an appropriate ground for departing from the guidelines); *People v Merriweather*, 447 Mich 799, 808 n 8; 527 NW2d 460 (1994) (the fact that the offense variable score exceeds the score accounted for in the guidelines' grid is a basis for departure); and *People v Castillo*, 230 Mich App 442, 448; 548 NW2d 606 (1998) (simply because a factor has already been considered in the guidelines does not preclude its use as a basis for departure).

While it is true that defendant had a steady job and little prior involvement with the police, we agree with the trial court that the aggravating circumstances surrounding this crime far outweighed any possible mitigating circumstances. Defendant attacked his wife in her home and *in front of their children*, viciously slashing her neck in an attempt to kill her. She suffered very serious wounds and testified that she lives in fear of defendant. His actions, as the trial court noted, remain unexplained. The offense variable grid did not accommodate the entirety of points assessed against defendant. Moreover, he had earlier put his hands around the victim's throat and choked her until she nearly lost consciousness, again in front of their children. Given these circumstances, we conclude that the sentence imposed was proportionate to the offense and the offender. The trial court did not abuse its discretion.¹

Affirmed.

/s/ Harold Hood

/s/ William C. Whitbeck

/s/ Patrick M. Meter

¹ We note that contrary to defendant's suggestion, the court was not required to expressly mention each goal of sentencing when imposing defendant's sentence. See *People v Johnson*, 173 Mich App 706, 709; 434 NW2d 218 (1988).