

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHONG YENG HANG,

Defendant-Appellant.

UNPUBLISHED

June 21, 2011

No. 297666

Oakland Circuit Court

LC No. 2009-229916-FH

Before: FORT HOOD, P.J., and DONOFRIO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of assault with intent to do great bodily harm, MCL 750.84.¹ The trial court sentenced defendant to five to 15 years' imprisonment. Because sufficient evidence supports defendant's conviction, the trial court properly instructed the jury, and defendant's sentence was proper, we affirm.

Kevin Chau Nguyen is an engineer who had been laid off from his automotive job. On October 4, 2009, he and a group of friends went to dinner at TGI Fridays to celebrate a job offer he received in North Carolina. After dinner, between approximately 10:00 pm and 10:30 pm, about 10 people from the group continued the celebration at Sukhothai Restaurant in Rochester Hills. Nguyen did not have alcohol at dinner, but had a couple beers and somewhere between one and three shots at Sukhothai. Nguyen and his friends headed out of the restaurant at about 2:00 am when the restaurant was closing. There is only one entrance/exit to the restaurant that is a small space (approximately 5 feet by 5 feet or 6 feet by 6 feet) with a double door foyer or vestibule. The inner door in the foyer faces west and the main door to the restaurant faces north.

Nguyen walked down a hallway toward the interior exit door, and made an immediate left to enter the exit foyer. Directly behind Nguyen were his two friends, one named Gary Kim

¹ Defendant was also charged with one count of felonious assault, MCL 750.82, but at the prosecution's request, the trial court dismissed the charge at the beginning of trial. Defendant was also charged with one count of domestic violence, MCL 750.81(2), but the jury acquitted defendant of that count.

and the other Zach Ostrander. Just as Nguyen turned and entered the foyer he saw “a male grab a female about the shoulders either on the back of the neck or the back of the head and throw her down.” Nguyen was immediately concerned and when he saw the male step toward the female who was still on the ground, Nguyen’s reaction was to reach out his right hand, grab the male by the collar, and say “what the f--k are you doing? You can’t do that.” Nguyen did not recall defendant responding verbally, but instead defendant immediately smashed a glass bottle or glass cup across his face. Nguyen did not realize that the glass object actually broke across his face even though his head went down after the contact and he saw shattered pieces of glass as it fell to the floor. Nguyen remembered feeling the force of the impact on his forehead, seeing a shine of glass, and then felt and saw defendant’s hand continue down to the bottom of his face. Nguyen did not see what object hit his face and did not have an opportunity to avoid it because the entire exchange took only seconds.

Nguyen let go of defendant as soon as he was hit in the face. After a friend told him he was bleeding, Nguyen tried to regain his footing and walked outside to try to get a look at who hit him. His friends surrounded him and told him he needed to go to the bathroom because his face was bleeding badly. When Nguyen was able to gather himself, he realized what happened and noticed a large amount of blood coming down his face and he did not open his left eye for fear of glass. Jitra Vichachang, a waitress at Sukhothai saw Nguyen walk into the bathroom bleeding from his head down to his shirt. Vichachang went into the bathroom to clean it and saw blood everywhere, including all over the floor, on the walls, and the mirrors. She testified that it looked like “someone got killed in there.”

Nguyen stated that he was not armed, did not strike defendant, threaten defendant, raise his fist at defendant, or attack him at any time. At some point during the series of events, Nguyen remembers Ostrander stepping into the vestibule but he did not threaten defendant and did not have a weapon. Kim similarly did not have a weapon. Nguyen testified that he had never met the couple, did not observe them arguing at any point earlier in the evening, and did not himself argue with defendant or come into contact with him before the incident. Nguyen remembered seeing the woman that defendant threw on the ground earlier because she had blonde hair. With regard to his memory of defendant, Nguyen remembered that he was a couple inches to half a foot shorter than Nguyen and that he had a very distinct receding hair line.

Nguyen testified someone called the police and they arrived in about 10 or 15 minutes. Nguyen was taken to Troy Beaumont Hospital where he received some stitches in his face that night. Nguyen had to wait until the morning for a plastic surgeon to complete the stitches because there were certain areas of his face near his mouth that needed expert medical care. Nguyen did not stop bleeding until sometime between the two surgeries. Nguyen received a total of about 50 stitches, had to stay overnight at the hospital, and had two separate surgeries to complete the stitches. Nguyen has five scars on his face from the incident. They are located on his temple, near his hairline, on his cheek branching off down to the corner of his mouth and up into his lip. Nguyen testified that he can positively identify defendant as his attacker because when he saw him again in person his memory of the key features of defendant’s face was jogged since he had looked at defendant’s face while he grabbed him. Nguyen has no doubt that defendant was the person who struck him in the face.

At trial, Gary Kim testified consistently with Nguyen's recollection of the events. Kim added that as he and Nguyen approached the vestibule he heard yelling before he saw defendant push the female down. Kim identified defendant as the person who hit defendant. Kim heard Nguyen ask defendant what he was doing and testified that defendant responded by swearing and asking Nguyen who he thought he was. Kim testified everything happened very quickly, within a few seconds, and in fact Nguyen and defendant were talking at the same time when he saw defendant strike Nguyen in the face with a glass Heineken beer bottle. Kim took Nguyen to the bathroom because there was a lot of blood coming from several deep cuts on Nguyen's face. They used Kim's shirt and some towels to apply pressure to the injuries. Kim then left the bathroom to see if defendant was still there because he had not seen him leave. Kim testified that he walked out of the restaurant and saw defendant walking to his car and could hear him yelling angrily even though the car was parked in the very back of the parking lot. Kim saw defendant get into the passenger side of the car. Kim took down the license plate number of the car when the car started because even though it was dark, a small light turned on and he could see the plate number. Kim put the plate number into his phone and then later provided it to police. Kim called the police, but someone had already called them by that time. When the police arrived Kim described what happened and gave police a description of defendant and the vehicle.

Carol Lee Hang (no relation to defendant) testified that she was at the Sukhothai Restaurant that night separately for a girls' night out birthday party. She testified that she knows defendant and his girlfriend or wife, Jaclyn Texas, through mutual friends of her husband but that they are only acquaintances, not friends. Carol Lee Hang did not know Nguyen before this incident. Carol Lee Hang testified that Texas was at the party at the restaurant that night and she also saw defendant at the restaurant that night. Carol Lee Hang stated that Texas was wearing nine inch heels that night and one of them broke causing Texas to stumble around and fall. Carol Lee Hang left the party right around the time the restaurant closed at 2:00 am. She was waiting outside the exit door for her keys when a large group of people exited the restaurant at one time and actually mobbed or pushed Carol Lee Hang. Several people were upset. Carol Lee Hang got blood on her while she was mobbed even though she was outside the restaurant during the incident and did not know what happened.

According to Carol Lee Hang, Texas had blood on her and approached Carol Lee Hang and asked her for a ride and she reluctantly agreed. Texas was intoxicated and Carol Lee Hang characterized her as "sloppy drunk," "disoriented," "upset," "crying" and a "mess" at different points during the ride. Texas could not remember how to get home because she had just moved a week before. Carol Lee Hang testified that although they stopped at her house briefly, she ended up taking Texas to her father's house. According to Carol Lee Hang, Texas did not say anything about the blood on her, and said nothing about defendant, she did, however, throw up in the car. Carol Lee Hang testified that she did not want anything to do with this trial because she was not involved and she did not see anything and that she was irritated for having to testify.

Texas testified that she and defendant are married in the Hmong culture but are not legally married. They have been together for six years and have one child. Texas went to Sukhothai that night with defendant to meet friends for a Hmong New Year party. Texas stated that she was not intoxicated that night but she had been drinking. Texas was wearing shoes with extremely high heels that night and one heel broke when she was dancing which made it difficult

to walk. She got into an argument with a girl at the party because the girl put her arms around defendant's neck. Texas confronted the girl and yelled loudly in her face. It was closing time so defendant reacted by firmly grabbing her arm and telling her to come with him to go home. Texas yanked her arm away from him. Defendant persisted with escorting her out of the restaurant and so did her sister-in-law, Duab Lor, who was walking behind her, pushing and nudging Texas out of the place.

According to Texas, while they were on their way out, but not yet near the exit foyer, Nguyen grabbed her husband by the collar with both hands and got in her husband's face, and defendant told Nguyen to "get the f--k out of my face." According to Texas, defendant whipped around to yank free from Nguyen's hold and walked a few steps toward the exit. Nguyen grabbed her husband again and they were in each other's faces but Texas could not hear what was said. Defendant yanked himself away again. At this time they were all near the exit door and Texas still wanted to go confront the girl who had her arms around defendant, but defendant once again grabbed Texas by the forearm as they were walking through the interior exit doors leading into the foyer. Texas pulled back from defendant's grip and fell into the door in the vestibule. Texas stated that defendant never pushed her to the floor or hit her. According to Texas, at that point Nguyen and three other men, two Asian and one Caucasian, encircled her husband, and Nguyen grabbed defendant again. Texas stated that she grabbed her husband to try to pull him out of the exterior exit door because she was afraid for him but she lost her grip and ended up going through the exit door to the outside with her friends. She did not see Nguyen get hit with a beer bottle.

Because her friends grabbed her and told her "let's get out of here," Texas left with Carol Lee Hang. Texas did not know that she had blood on her at that point. Texas only later found out that someone was injured in the restaurant because Carol Lee Hang was on the phone on the way home. Texas was worried it was her husband who was injured and she started crying. She did not go back to the restaurant to check on her husband because she did not want to get mixed up in the chaos. Texas stated that she went back to Carol Lee Hang's house and then defendant picked her up the next morning. She stated that she did not go to her father's house and she did not throw up in the car.

Texas testified that defendant and Nguyen did not know each other and that the only possible reason Nguyen would have grabbed defendant was because Nguyen might have seen her husband grab her and saw her yank her arm away.

At trial, Duab Lor, defendant's sister in law, testified consistently with Texas's recollection of the events that she and defendant tried to escort Texas out of the restaurant to avoid a confrontation with the girl who put her arms around defendant's neck. Lor testified that both she and defendant pushed and pulled Texas to try to get Texas out of the restaurant. Lor testified that Texas stumbled as they were leaving and hit the door. According to Lor, Nguyen grabbed defendant "out of nowhere" and then moments later Nguyen grabbed defendant again and two or three other men were standing with Nguyen. Lor testified that defendant fell back into her and as she was exiting the door she saw defendant strike Nguyen in the face. Lor saw shattered glass when defendant hit Nguyen and then she "took off." Lor testified that she never saw Nguyen or anyone physically threaten defendant with a weapon or otherwise, though she

believed defendant hit Nguyen “because he felt he was being threatened by this man yanking on him.”

At approximately 2:00 am, Sergeant Brian Lippard of the Oakland County Sheriff’s Office was dispatched to the Sukhothai Restaurant in Rochester Hills to respond to reports of an assault at the restaurant. Lippard arrived at the front of the restaurant and came upon a group of people. He asked if the offender was present and the location of the victim. An individual with the last name Kim, advised Lippard that defendant had fled the scene as a passenger in a Pontiac. Kim also gave Lippard the license plate number of the vehicle. Lippard also received a description of the offender. Lippard radioed the description of the offender as well as the plate information to central dispatch. A BOL, “be on the lookout” was issued to responding units. The plate information came back as registered to defendant.

As Lippard entered the restaurant in the foyer area he saw the victim, Nguyen, who had an injury to his face standing in a large puddle of blood on the floor. Lippard testified that the left side of Nguyen’s face received extensive lacerations to the point that when Nguyen removed a towel he was holding on his face, the blood gushed and it appeared that there was damage to his left eye as well. Nguyen stated that “he was struck in across the face with a beer bottle that broke across his face.” Lippard asked what happened and Nguyen told him that “he was attacked in the vestibule by an Asian male, short hair, receding hair line wearing a sky blue long-sleeved shirt, button [down] along with blue jeans.” Nguyen also stated that the offender was about 5’5” tall.

Nguyen explained to Lippard that he had observed what he believed to be an Asian male attacking an Asian female. Nguyen said that he stopped and grabbed the male and told him to stop. According to Nguyen, defendant responded by saying “Don’t f--k with me.” and then immediately struck Nguyen in the face with the glass bottle.

The employees at the restaurant were already mopping up the floor with large mops because of the extensive blood all over the floor leading to the bathroom, and also in the bathroom sinks. Lippard testified that the blood was so extensive, he almost tripped on it. During their clean up, the employees also collected broken glass from the floor. Lippard stated that it was obvious that the crime scene was disturbed and had been contaminated by the mopping and collection of the broken glass.

James Kavalick, a detective with the Oakland County Sheriff’s office interviewed Carol Lee Hang within a few days after the incident. Carol Lee Hang was not cooperative, was reluctant to give information, and was upset to be involved in the incident. Near the end of the interview with Carol Lee Hang, Kavalick was able to see her vehicle. He observed what appeared to be, in his experience, “dried blood on both the driver’s side door and the passenger door inside the vehicle.”

James English, a detective with the Oakland County Sheriff’s office identified defendant as the suspect through the license plate number Kim obtained at the scene within a week of the incident. English stated that he went to defendant’s residence and defendant and Texas were walking out of the house at that time. English testified that defendant was getting into his Pontiac vehicle and the vehicle matched the description of the vehicle given at the scene. When

English asked him about the incident at Sukhothai, defendant denied being there and said he did not know what English was talking about. English further pressed him about his whereabouts explaining that they had a description of his vehicle being there that night and defendant said “well there’s a lot of vehicles that look like mine.” When English explained that the license plate number they received from a witness matched his license plate, defendant continued to deny being at the restaurant.

As they were talking, English noticed that defendant kept his right hand in his jacket pocket. English asked him to remove his hand from his pocket and defendant complied. English observed that defendant had a fresh cut on one of his fingers on his right hand and stitches on his finger. When English asked him about the cut, defendant responded that he cut it on a piece of glass when he was moving a glass table. English asked him if he was sure he did not cut it on a beer bottle and defendant responded in the negative. At that point defendant stated that he did not want to continue the conversation and that he was done talking.

At the close of the evidence, two counts went to the jury, one count of domestic violence, MCL 750.81(2), and one count of assault with intent to do great bodily harm, MCL 750.84. The jury acquitted defendant of domestic violence, but found him guilty of assault with intent to do great bodily harm. Defendant now appeals as of right.

Defendant first argues that there was insufficient evidence at trial to convict him of assault with intent to commit great bodily harm less than murder and his conviction should be reversed and the case dismissed. We review a challenge to the sufficiency of the evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In doing so, we review the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Harrison*, 283 Mich App 374, 377-378; 768 NW2d 98 (2009). It is for the trier of fact rather than this Court to determine questions of credibility and the weight to be accorded the evidence. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). “Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime.” *Id.* “All conflicts in the evidence must be resolved in favor of the prosecution.” *Id.*; see also *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000).

The elements of assault with intent to do great bodily harm, which is a specific intent crime, are: (1) an attempt or threat with force or violence to do corporal harm to another, and (2) an intent to do great bodily harm less than murder. MCL 750.84; *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005). The second element requires proof of specific intent, as opposed to general intent. *Id.*; *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). “[T]he distinction between specific intent and general intent crimes is that the former involve a particular criminal intent beyond the act done, while the latter involve merely the intent to do the physical act.” *People v Beaudin*, 417 Mich 570, 573-574; 339 NW2d 461 (1983) (citation omitted). “This Court has defined the intent to do great bodily harm as ‘an intent to do serious injury of an aggravated nature.’” *Brown*, 267 Mich App at 147, citing *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986).

The facts indicate that Nguyen observed defendant grab Texas by the back of her head or her neck and throw her to the floor of the vestibule. When defendant began moving toward

Texas, Nguyen intervened by grabbing defendant by the shirt collar with one hand. Nguyen asked defendant, “What the f--k are you doing? You can’t do that.” Defendant said “don’t f--k with me,” and without hesitation, and at close range, struck Nguyen across the face with a glass beer bottle with such velocity that Nguyen did not see it coming and could not avoid it, and with such force that the glass shattered on impact. Nguyen even remembered feeling and seeing defendant’s hand continue down to the bottom of his face after the impact occurred. The impact of the bottle breaking across Nguyen’s forehead and then defendant’s act of moving his hand down Nguyen’s face caused several deep lacerations in different areas of Nguyen’s face. Defendant did not attempt to get help for Nguyen and instead fled the scene. It is undisputed that Nguyen suffered several severe lacerations on his face, lost a great deal of blood, had to spend the night in the hospital, underwent two surgeries to repair the lacerations, endured fifty stitches, and now lives with five permanent scars on his face as a result of the attack.

Viewing this evidence in the light most favorable to the prosecution, we conclude that a reasonable trier of fact could have found beyond a reasonable doubt that defendant intended to break the glass bottle across the victim’s face causing the victim severe and permanent injuries. Furthermore, a rational trier of fact could have also inferred that because defendant brutally hit and cut defendant with a potentially deadly weapon, he intended to cause serious bodily injury and harm. “An intent to harm the victim can be inferred from defendant’s conduct.” *Parcha*, 227 Mich App at 239.

Again, the testimony was sufficient to enable the jury to find each of the elements of assault with intent to do great bodily harm less than murder. And while defendant argues on appeal that the evidence showed that he felt threatened when Nguyen grabbed him and that he smashed the glass bottle across the victim’s face in self-defense, “[t]his Court will not interfere with the trier of fact’s role of determining the weight of the evidence or the credibility of witnesses.” *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007). Furthermore, the testimony simply failed to support defendant’s assertion that he acted in defense of himself or Texas when he smashed the glass bottle across the victim’s face. And even if defendant believed he was somehow arguably defending himself at the time, “an act committed in self-defense but with excessive force or in which defendant was the initial aggressor does not meet the elements of lawful self-defense.” *People v Heflin*, 434 Mich 482, 509; 456 NW2d 10 (1990).

Next, defendant argues that the trial court erred when it failed to charge the jury with the lesser offense of aggravated assault because it denied defendant his right to a fair trial. Defense counsel requested the jury be instructed on aggravated assault, but the trial court denied the request. This Court reviews de novo a trial court’s decision whether to give a lesser offense instruction. *People v Walls*, 265 Mich App 642, 644; 697 NW2d 535 (2005). A criminal defendant is entitled to a jury instruction on a necessarily included lesser offense, not a lesser cognate offense, if a rational view of the evidence would support such an instruction. *People v Mendoza*, 468 Mich 527, 533; 664 NW2d 685 (2003); *People v Cornell*, 466 Mich 335, 353-357; 646 NW2d 127 (2002).

A jury instruction is not permitted for a cognate lesser offense. *People v Nyx*, 479 Mich 112, 121; 734 NW2d 548 (2007). “A cognate lesser offense is one that shares elements with the charged offense but contains at least one element not found in the higher offense.” *Id.* at 118 n 14. A person is guilty of aggravated assault if the “person . . . assaults an individual without a

weapon and inflicts serious or aggravated injury upon that individual without intending to commit murder or to inflict great bodily harm less than murder” MCL 750.81a(1). As we set out above, assault with intent to commit great bodily harm less than murder requires proof of (1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder. MCL 750.84; *Brown*, 267 Mich App at 147.

Unlike aggravated assault, the crime of assault with intent to do great bodily harm less than murder does not require proof that the victim was injured. *People v Harrington*, 194 Mich App 424, 430; 487 NW2d 479 (1992) (Although assault with intent to do great bodily harm is a specific intent crime, “[n]o actual physical injury is required for the elements of the crime to be established.”) Because the lesser offense requires proof of injury and the greater offense does not, aggravated assault is a cognate lesser offense of assault with intent to do great bodily harm. *Nyx*, 479 Mich at 118 n 14. Consequently, the law does not permit a jury instruction for aggravated assault. *Id.* at 121; *Cornell*, 466 Mich at 357-359. The trial court correctly interpreted *Cornell* and therefore properly refused to give the requested instruction.

Defendant also asserts that his sentence was disproportionate to the seriousness of the offense and the dangerousness of the offender and that OV 19 was incorrectly scored. We review for an abuse of discretion a trial court’s imposition of a sentence. *People v Aldrich*, 246 Mich App 101, 126; 631 NW2d 67 (2001). We must affirm if the defendant’s minimum sentence falls within the properly scored sentencing guidelines. *People v Powe*, 469 Mich 1032, 679 NW2d 67 (2004); MCL 769.34(10). A sentence within the guidelines range is presumptively proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v Powell*, 278 Mich App 318, 323-324, 750 NW2d 607 (2008). A sentence that is proportionate is not cruel or unusual punishment. *People v Terry*, 224 Mich App 447, 456, 569 NW2d 641 (1997).

The sentencing guidelines range for defendant’s conviction was 29 to 71 months. A guidelines range of 29 to 71 months means that the minimum sentence must fall within that range. The trial court sentenced defendant within the guidelines range to a prison term of 60 months to 15 years. Because the minimum sentence, 60 months, was within the guidelines range of 29 to 71 months we must affirm the sentence. It is not subject to review for proportionality. MCL 769.34(10); *People v Pratt*, 254 Mich App 425, 429-430; 656 NW2d 866 (2002). (“Under MCL 769.34(10), this Court may not consider challenges to a sentence based exclusively on proportionality, if the sentence falls within the guidelines.”)

Defendant challenges his score of 10 points for OV 19. OV 19 concerns a threat to the security of a penal institution or court or interference with the administration of justice or the rendering of emergency services. Ten points are to be assessed for OV 19 if the offender otherwise interfered with or attempted to interfere with the administration of justice. MCL 777.49(c).

Defendant argued during sentencing that OV 19 was improperly scored at 10 points because leaving the scene of the incident did not rise to the level of interfering with the administration of justice. The trial court concluded that OV 19 scored at 10 points was proper based on the fact that defendant had lied to the police about his whereabouts on the night of the incident when they interviewed him, and also the fact that he fled the scene.

In *People v Barbee*, 470 Mich 283, 288; 681 NW2d 348 (2004), our Supreme Court held that providing a false name to police constitutes interference with the administration of justice, such that OV 19 may be scored for such conduct. Here, defendant fled from the scene of the crime before police arrived. When police finally tracked him down defendant repeatedly lied saying he was not at the restaurant on the night of the incident, lied saying that his car was not at the restaurant, and even lied when confronted with the information that there was an eye witness report of his license plate number on his car at the scene. Defendant also attempted to hide the cut and stitches on his right hand and lied about the origin of the cut. Defendant obviously attempted to thwart the detectives' investigation of a vicious assault and interfere with the performance of their police duties, and thus interfered with the administration of justice. We conclude that 10 points was an appropriate score for OV 19 under the circumstances of this case.

Finally, defendant contends that due process requires resentencing where the court enhanced defendant's sentence based on facts neither admitted by defendant nor proven to a jury beyond a reasonable doubt and is plainly illegal under *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). In *Blakely*, the United States Supreme Court struck down as violative of the Sixth Amendment a determinate sentencing scheme in which the sentencing judge was allowed to increase the defendant's maximum sentence on the basis of facts that were not reflected in the jury's verdict or admitted by the defendant. As defendant here concedes in his brief on appeal, our Supreme Court has held that *Blakely* does not apply to Michigan's indeterminate sentencing scheme, in which a defendant's maximum sentence is set by statute and the sentencing guidelines affect only the minimum sentence. See *People v Drohan*, 475 Mich 140, 159-164; 715 NW2d 778 (2006). Accordingly, defendant is not entitled to resentencing.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Pat M. Donofrio
/s/ Amy Ronayne Krause