

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD ROLAND COMBS,

Defendant-Appellant.

UNPUBLISHED

August 14, 2003

No. 239371

Kalamazoo Circuit Court

LC No. 01-0001087-FC

Before: Whitbeck, C.J., and Smolenski and Murray, JJ.

PER CURIAM.

Defendant was convicted by a jury of two counts of assault with intent to commit murder, MCL 750.83, assault with intent to commit armed robbery, MCL 750.89, felon in possession of a firearm, MCL 750.224f, and three counts of possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as a third habitual offender, MCL 769.11, to concurrent sentences of life imprisonment for the assault with intent to commit murder convictions, 337 to 900 months' imprisonment for the assault with intent to commit armed robbery count, and 3 to 10 years' imprisonment for the felon in possession of a firearm count. Defendant was also sentenced to concurrent 2-year terms of imprisonment for the felony-firearm convictions, to be served consecutive to and preceding defendant's other sentences. Defendant appeals as of right. We affirm.

Defendant first argues that the prosecution failed to introduce evidence sufficient to support his convictions. Specifically, defendant asserts that the evidence did not prove beyond a reasonable doubt that defendant was the person who committed the charged crimes and that defendant possessed the requisite intent to kill. We disagree.

When reviewing the sufficiency of the evidence in a criminal case, we "view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt." *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997) (citation omitted). All conflicts with respect to the evidence must be resolved in favor of the prosecution. *Id.* Also, we will not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992).

At trial, the prosecution introduced a substantial amount of evidence indicating that defendant was, in fact, the perpetrator of the charged crimes. Both shooting victims, Conley and Smith, testified that they knew the perpetrator before the shooting and both identified defendant as the person who shot them. Conley also testified that he recognized the shooter's voice, which he heard during the time he was being robbed, as that of defendant. Furthermore, three witnesses, with whom defendant had been staying at the time of the shootings, each testified that on the afternoon of the shooting, defendant came into the house with blood all over his clothes, which defendant then soaked in the bathtub. When defendant heard a news report of the incident at Conley Repairables, one witness testified that he immediately told her sister to get rid of the clothing soaking in the bathtub, and another witness testified that defendant admitted to her that he had committed the shootings. On this record, we find there was sufficient evidence presented for a rational trier of fact in finding beyond a reasonable doubt that defendant committed the crimes with which he was charged.

Defendant also asserts the evidence was insufficient to prove beyond a reasonable doubt that defendant had the requisite intent to kill to sustain his convictions for assault with intent to commit murder. Again, we disagree. Intent to kill may be inferred from the facts in evidence and, because the state of an actor's mind is difficult to prove, minimal circumstantial evidence is sufficient. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

In the present case, defendant shot each of the victims multiple times in the head and torso areas, areas extremely susceptible to lethal injuries, with a small-caliber pistol. Both victims were initially shot in the head at close range. Afterwards, Conley was shot twice in the abdomen while he was already lying on the ground, and Smith was shot in the back of his head while trying to escape. In addition, the evidence indicated that defendant hit Smith in the back of the head with a four-way lug wrench. Accordingly, we find that the prosecution introduced sufficient evidence to prove defendant possessed the requisite intent to kill.

Lastly, defendant argues that, in regards to his assault with intent to commit murder convictions, the trial court erred in imposing sentences that exceeded the statutory sentencing guidelines. Defendant contends that the court did not articulate substantial or compelling reasons that were not accounted for in the scoring variables. We disagree.

Because defendant committed the charged offenses in July 2001, the legislative sentencing guidelines apply to this case. MCL 769.34(2); *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 316 (2000). MCL 769.34(3) provides:

A court may depart from the appropriate sentence range established under the sentencing guidelines . . . if the court has a substantial and compelling reason for that departure and states on the record the reasons for departure. All of the following apply to a departure:

(a) The Court shall not use an individual's gender, race, ethnicity, alienage, national origin, legal occupation, lack of employment, representation by appointed legal counsel, representation by retained legal counsel, appearance in propria persona, or religion to depart from the appropriate sentence range.

(b) The court shall not base a departure on an offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range unless the court finds from the facts contained in the court record, including the presentence investigation report, that the characteristic has been given inadequate or disproportionate weight.

Whether there are substantial and compelling reasons for a departure is reviewed for an abuse of discretion, giving due deference to the trial court. *People v Babcock*, ___ Mich ___; ___ NW2d ___ (Docket No. 121310, decided 7/31/03), slip op at 19. “The deference that is due is an acknowledgment of the trial court's extensive knowledge of the facts and that court's direct familiarity with the circumstances of the offender.” *Id.*, slip op at 24. A substantial and compelling reason justifying departure from the guidelines is an “objective and verifiable” reason that “keenly or irresistibly” grabs the court’s attention, is recognized as having “considerable worth” in deciding the length of the sentence, and exists only in “exceptional cases.” *Id.*, slip op at 9; internal quotations and citation omitted. Further, even where the court departs from the statutory sentencing guidelines, the sentence imposed must still be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *Id.*, slip op at 17.

In this case, the trial court departed from the recommended minimum sentence range of 135 to 337 months’ imprisonment for defendant’s assault with intent to commit murder convictions and sentenced defendant to life imprisonment, stating, in part:

Pursuant to MCL 769.34, the Court finds the following substantial and compelling reasons for departure from the guideline sentence range. The Court finds from facts contained in the court record that the defendant’s conduct in this case, the impact of the defendant’s conduct on the victims and the unique danger that the defendant presents to society have been given inadequate weight in the guideline scoring.

The defendant’s offense variable points more than double the highest offense variable level (VI) and the highest offense variable level does not give adequate weight to the defendant’s vicious character, predatory conduct and relentless efforts to kill the two victims in this case. The guideline scoring points do not adequately recognize the long range catastrophic effect this crime has had on the victims physically, emotionally and does not recognize the devastating impact on the victims, their families and dependants. This defendant in the short space of 21 years has proven himself to be a highly dangerous sociopathic individual. He cannot be allowed to have freedom in society without compromising the safety of innocent unsuspecting victims. His lack of remorse for his conduct in this case causes the Court concern that if he is released from prison, he will repeat his violent, unprovoked, life-threatening acts against other innocent victims.

The trial court admittedly based its departure on offense or offender characteristics already taken into account in the scoring variable. It is true that the scoring variables consider a defendant’s prior crimes, possession and firing of a weapon causing life-threatening injury,

psychological injury, the number of victims, predatory conduct, and excessive brutality. However, the court believed that these factors were not given adequate weight in the guidelines.

Given the particularly brutal nature of these shootings, which occurred at close range, the long-lasting psychological and physical effects of the incident on the victims, and defendant's relentless pursuit of one of the victim's, we agree with the trial court that, under the circumstances of this case, the scoring variables gave inadequate weight to these factors. Additionally, the scoring variables do not consider defendant's age relative to his prior record and the number of shots fired at the victims. Therefore, we find that the court did not abuse its discretion in determining that substantial and compelling reasons existed to justify an upward sentencing departure.

Furthermore, we find defendant's life sentences were proportional. Defendant calmly spoke to one of the victims about buying a car, and moments later, shot both victims multiple times at close range. After initially shooting both victims in the head, defendant shot Conley again while he was in a near helpless state lying on the ground. As Smith was trying to flee, defendant shot him twice in the head and then hit him in the back of the head with a heavy lug wrench. It appears that the only reason defendant was not charged with murder was because of the victims' incredible luck, as their respective injuries were life threatening. We can imagine few scenarios worse than the one presented by this case. Accordingly, the trial court did not abuse its discretion in sentencing defendant to life imprisonment for his assault with intent to commit murder convictions.

Affirmed.

/s/ William C. Whitbeck
/s/ Michael R. Smolenski
/s/ Christopher M. Murray