

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIK R. SCHILLING,

Defendant-Appellant.

UNPUBLISHED

January 15, 2004

No. 241072

Wayne Circuit County

LC No. 00-011836-01

Before: Hoekstra, P.J., and Sawyer and Gage, JJ.

PER CURIAM.

Defendant was charged with one count of assault with intent to murder, MCL 750.83, for his involvement in an altercation during which defendant stabbed the victim, Thomas Brymer. Following a bench trial, the trial court found defendant guilty but mentally ill of the lesser charge of assault with intent to do great bodily harm, MCL 750.84. The court sentenced defendant to 18 months' to 10 years' imprisonment. Defendant now appeals as of right. We affirm.

At trial, the prosecution theorized that defendant stabbed Brymer during an argument that occurred after Brymer asked defendant to leave his apartment. Defendant, however, alleged that Brymer was selling drugs out of the apartment and that Brymer and his friend, Mike Street, initiated the beating of defendant because of marijuana that Brymer believed defendant took. Accordingly, defendant alleged that he stabbed Brymer in an attempt to defend himself.

Defendant argues on appeal that he is entitled to a new trial because the prosecution's evidence was against the great weight of competent and credible evidence. In a bench trial, to determine if the verdict was against the great weight of the evidence, we must first review the findings of fact for clear error. *Amb's v Kalamazoo Co Rd Comm*, 255 Mich App 637, 651; 662 NW2d 424 (2003). Because a claim that the verdict is against the great weight of the evidence requires a review of the whole body of proofs, we must also determine if the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998).

In a motion for new trial based on a claim that the verdict is against the great weight of the evidence, the issue of the credibility of the witnesses is implicit in determining the great weight of that evidence. *People v Lemmon*, 456 Mich 625, 638; 576 NW2d 129 (1998). However, a new trial motion based solely on the weight of the evidence regarding witness credibility or conflicting testimony is not favored. *Id.* at 639. Here, the testimony of Brymer and

Street was in direct conflict with defendant's evidence. Brymer testified that he asked defendant to leave his apartment and when he attempted to move defendant away, defendant stabbed him. Dr. Firoza B. VanHorn, a criminal forensic psychologist and neuro-psychologist hired by defense counsel, testified that defendant told her that it was Brymer who began beating defendant and he stabbed Brymer of fear. Although the witnesses' testimony was in direct conflict, defendant had an opportunity to discredit Brymer's and Street's testimony on cross-examination. Issues of credibility are for the trier of fact and deference must be given to the trial court's ability to assess the credibility of witnesses. *People v Ahumada*, 222 Mich App 612, 617; 564 NW2d 188 (1997). The trial court found Brymer's version of the attack credible and discredited defendant's version. The trial court was better able to observe the witnesses and determine their credibility, and we find no error with the trial court's findings of fact with regard to witness credibility.

We likewise find that the trial court did not err in rejecting defendant's claim of self-defense. Assault with intent to do great bodily harm involves (1) an assault, (2) with intent, (3) to cause serious injury of another of an aggravated nature, (4) less than murder. MCL 750.84. But a defendant may be found to be acting in legal self-defense if the defendant had an honest and reasonable belief that he was in imminent danger of death or serious bodily harm. *People v Heflin*, 434 Mich 482, 502-503; 456 NW2d 10 (1990). Here, the prosecution's evidence demonstrated that defendant stabbed Brymer first, making defendant the initial aggressor, and that defendant did not believe he was in imminent danger because he did not leave until after being confronted by Street. While this evidence conflicted with defendant's evidence, the prosecution's evidence was credible and effectively rebutted beyond a reasonable doubt defendant's claim of an honest and reasonable belief that he was in imminent danger. Because the prosecution met its burden of disproving self-defense beyond a reasonable doubt, the trial court was correct in finding that defendant was not acting in self-defense. *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

Defendant also contends that the verdict was contrary to the great weight of the evidence because evidence was presented to support his defense of insanity and diminished capacity. A defendant has the burden of proving insanity and diminished capacity by a preponderance of the evidence. MCL 768.21a(3); *People v Mette*, 243 Mich App 318, 325; 621 NW2d 713 (2000). Legal insanity is an affirmative defense to a crime if because of a mental illness a person lacked the capacity to appreciate the nature and quality or the wrongfulness of his conduct. MCL 768.21a. Here, the expert witnesses presented evidence of defendant's psychiatric history, but conclusive evidence was not presented to support the claim that defendant could not appreciate the wrongfulness of his actions. The trial court, therefore, did not err in finding defendant mentally ill, but not legally insane.

Diminished capacity is relevant to whether a defendant has the ability to form the specific intent necessary to commit a crime. *People v England*, 164 Mich App 370, 375; 416 NW2d 425 (1987). The defense of diminished capacity was previously available "only where it is shown that a defendant's impairment rendered him unable to formulate the specific intent to commit a crime; it is not available where testimony establishes only that a defendant could not fully appreciate the consequences of his acts." *Mette, supra* at 329, quoting *People v Denton*, 138 Mich App 568, 571; 360 NW2d 245 (1984). Here, there was no evidence presented to show

defendant could not formulate intent. Therefore, the trial court was correct in finding defendant's mental illness was not a complete defense.

Considering the whole body of proofs, the evidence does not preponderate so heavily against the verdict that it would be a miscarriage of justice to let the verdict stand.

Defendant also asserts on appeal that insufficient evidence was presented to support his conviction. In viewing the sufficiency of the evidence, we must view the evidence in a 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 Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute sufficient proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Assault with intent to do great bodily harm is a specific intent crime. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). Intent may be proven by inference from all the facts and circumstances. *People v Daniels*, 163 Mich App 703, 706; 415 NW2d 282 (1987).

Although the witnesses' testimony conflicted, it is for the trier of fact to evaluate discrepancies and determine the credibility of the testimony. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). Further, any conflict in the testimony must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). The prosecutor offered evidence indicating that defendant saw a knife on the floor and intentionally stabbed the victim in the stomach with it, causing serious injury to the victim. Therefore, sufficient evidence was presented to prove the elements of the assault with intent to do great bodily harm beyond a reasonable doubt.

To the contrary, *insufficient* evidence was presented to support defendant's claim of self-defense. The prosecution's evidence supported a conclusion that defendant was the initial aggressor and that defendant did not believe he was in imminent danger. Viewing the evidence in the light most favorable to the prosecution, and resolving all conflicts in the prosecution's favor, the prosecution met its burden of disproving beyond a reasonable doubt that defendant acted in self-defense.

Further, the prosecution offered sufficient evidence to support a finding that defendant was not legally insane and lacked diminished capacity. While the parties' expert witnesses agreed that defendant was mentally ill, they disagreed with regard to defendant's ability to understand the wrongfulness of his actions. Resolving these conflicts in favor of the prosecution, *Terry, supra* at 452, and viewing the evidence in the light most favorable to the prosecution, we conclude that the prosecutor presented sufficient evidence to show defendant was not legally insane under MCL 768.21a when he stabbed the victim with a knife.

The prosecution likewise presented sufficient evidence to show defendant did not have diminished capacity. Again, defendant had the burden of proving diminished capacity by a preponderance of the evidence. *Denton, supra* at 573. Defendant's expert witness did not establish defendant was incapable of formulating intent to commit the crime of assault with

intent to cause great bodily harm. *Id.* Moreover, defendant's expert witness confirmed that defendant intentionally stabbed the victim. Therefore, sufficient evidence was presented to disprove defendant's claim of diminished capacity.¹

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Hilda R. Gage

¹ In light of this conclusion, we need not decide whether defendant had a vested right to raise the diminished capacity defense. See *People v Carpenter*, 464 Mich 223, 242; 627 NW2d 276 (2001).