

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
May 15, 2012

v

MATTHEW LANE CHRISTIAN,

Defendant-Appellant.

No. 304265
Eaton Circuit Court
LC No. 10-020123-FC

Before: OWENS, P.J., and TALBOT and METER, JJ.

PER CURIAM.

Matthew Lane Christian appeals as of right his conviction for assault with intent to commit great bodily harm less than murder.¹ Christian was sentenced as a second habitual offender² to 40 months to fifteen years' imprisonment with 94 days credit. We affirm.

This case arises out of a stabbing that took place in Delta Township on March 9, 2010. Christian and the victim had known each other for approximately ten years. The victim accused Christian of stealing prescription medication from him approximately six weeks before the stabbing. On the night of the incident, Christian was at home with his parents. The victim spoke with Christian's mother and advised that Christian had been making inappropriate telephone calls to him. The victim was intoxicated. Later that evening, the victim arrived at Christian's home. Christian's mother asked the victim to leave and threatened to call the police. The victim testified that he then attempted to leave, but was attacked by Christian. Christian testified that the victim did not attempt to leave, but struck him with a hard object, causing a laceration over Christian's left eye. Christian stabbed the victim several times in the back, causing life-threatening injuries. Eaton County Sheriff's deputies arrived at the scene and interviewed the witnesses and Christian. The deputies observed a small cut over Christian's left eye. The victim was hospitalized for over a month, was placed on a ventilator, and received multiple surgical procedures.

¹ MCL 750.84.

² MCL 769.10.

Christian claims that the evidence at trial was insufficient to support his conviction of assault with the intent to commit great bodily harm less than murder based on the defenses of self-defense and defense of others. We disagree. This Court reviews Christian's claim of insufficient evidence de novo.³

[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.⁴

“The elements of assault with intent to do great bodily harm less than murder^[5] are (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.”⁶ A claim of self-defense or defense of others requires that a defendant demonstrate “an honest and reasonable belief of an imminent danger of death or great bodily harm” at the time of the incident.⁷ “[R]easonableness depends on what an ordinarily prudent and intelligent person would do on the basis of the perceptions of the actor.”⁸ Once a defendant accused of assault with intent to do great bodily harm has introduced evidence of self-defense or defense of others, “the prosecution bears the burden of disproving it beyond a reasonable doubt.”⁹

Christian does not dispute that he was involved in an altercation with the victim, or that he stabbed the victim. Rather he argues that a rational jury could not have found that the prosecution disproved his theories of self-defense and defense of others beyond a reasonable doubt. Contradictory evidence was presented regarding whether the victim attempted to leave the premises after Christian's mother threatened to call the police. While Christian testified that the victim struck him with a hard object, no one reported to law enforcement that the victim had a weapon. Additionally, the victim testified that Christian ran toward him at “full speed” initiating the altercation. There was no evidence that the victim made explicit threats toward Christian or his parents. This Court must not interfere with the jury's role of determining the weight of evidence and the credibility of witnesses.¹⁰ “It is for the trier of fact . . . to determine

³ *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002).

⁴ *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992).

⁵ MCL 750.84.

⁶ *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005) (quotation marks, citations and emphasis omitted).

⁷ *People v Orlewicz*, 293 Mich App 96, 102, 110; 809 NW2d 194 (2011).

⁸ *Id.* at 102.

⁹ *People v James*, 267 Mich App 675, 677; 705 NW2d 724 (2005).

¹⁰ *Wolfe*, 440 Mich at 514-515.

what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.”¹¹ Therefore, taking the evidence in the light most favorable to the prosecution, a rational fact-finder could have found that the prosecution disproved that Christian acted in self-defense or in defense of others beyond a reasonable doubt.¹² Thus, there was no reversible error.

Christian also argues that the trial court erred by allowing the jury to continue deliberations without identifying the juror who brought a legal dictionary into the jury room or inquiring into the extent that the juror utilized the legal dictionary or shared its contents with the other jurors. We disagree. This unpreserved issue is reviewed for plain error affecting Christian’s substantial rights.¹³

“[A] jury’s use of a dictionary to define a relevant legal term is error, but it is not prejudicial per se.”¹⁴ “[T]he trial judge has extensive discretion in devising procedures to ensure that the jury uses the court’s instructions and not a dictionary definition.”¹⁵ Here, the trial court acknowledged to the jury that a legal dictionary had been found and instructed the jury that it was to decide the case based on the law provided by the court, and not perform outside research. Although the trial court did not inquire into the extent that the legal dictionary had been used, it properly instructed the jurors to rely on the court’s instructions. Jurors are presumed to follow their instructions.¹⁶ Thus, any error does not warrant reversal.

Additionally, Christian’s assertion that defense counsel was ineffective for failing to object to continued deliberations without inquiring into the facts surrounding the legal dictionary must fail. To establish ineffective assistance of counsel, Christian “must show (1) that the attorney’s performance was objectively unreasonable in light of prevailing professional norms and (2) that, but for the attorney’s error or errors, a different outcome reasonably would have resulted.”¹⁷ Because the trial court’s instructions cured any error, defense counsel was not ineffective for failing to object, as “meritless or futile objections” are not required.¹⁸

Christian further alleges that defense counsel was ineffective in a myriad of ways at both sentencing and trial. We disagree. This Court’s review of unpreserved claims of ineffective

¹¹ *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

¹² *Wolfe*, 440 Mich at 515-516; *James*, 267 Mich App at 676-677.

¹³ *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

¹⁴ *People v Messenger*, 221 Mich App 171, 176; 561 NW2d 463 (1997).

¹⁵ *Id.*, citing *US v Gillespie*, 61 F3d 457, 460 (CA 6, 1995).

¹⁶ *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008).

¹⁷ *People v Harmon*, 248 Mich App 522, 531; 640 NW2d 314 (2001).

¹⁸ *People v Moorner*, 262 Mich App 64, 76; 683 NW2d 736 (2004).

assistance of counsel is limited to mistakes apparent on the record.¹⁹ We have carefully scrutinized Christian's arguments and thoroughly reviewed the record. We find that Christian's allegations that defense counsel failed to properly investigate the case, failed to adequately prepare for trial, failed to call exculpatory witnesses, failed to secure a hypothetical expert witness, failed to adequately represent him at sentencing, and failed to object to witness testimony, the admission of Christian's statements to police, and instances of alleged prosecutorial misconduct to be wholly devoid of legal merit or factual support. Christian has failed to meet his burden of overcoming the presumption that defense counsel's actions constituted reasonable professional assistance and involved sound trial strategy.²⁰ Christian has also failed to indicate how the prosecutor's allegedly improper statements constituted prosecutorial misconduct. The jury was instructed that statements and arguments of the attorneys are not evidence and jurors are presumed to follow their instructions.²¹ Thus, reversal is not warranted.

Finally, Christian has improperly challenged the accuracy of the information relied on in determining his sentence, as he did not raise "the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in" this Court.²² This Court, however, does take notice that the Presentence Investigation Report ("PSIR") contains a patent ambiguity. In various places, the PSIR lists Christian's status as on probation, on felony bond, or simply "none." At sentencing, the trial court referred to Christian as being on probation. Christian claims that he was not on probation, but was on felony bond. The evidence does not resolve the ambiguity.

Christian was scored ten points for prior record variable six ("PRV 6") which assesses points based on the offender's relationship to the criminal justice system at the time of the sentencing offense.²³ Ten points are scored if the offender "is on parole, probation, or delayed sentence status or on bond awaiting adjudication or sentencing for a felony" at the time of the sentencing offense.²⁴ Assuming *arguendo* that Christian was on felony bond at the time of the sentencing offense, his PRV score would remain the same. Inaccurate information in the PSIR

¹⁹ *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007).

²⁰ *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002); *People v Payne*, 285 Mich App 181, 190; 774 NW2d 714 (2009).

²¹ *Unger*, 278 Mich App at 235.

²² MCL 769.34(10).

²³ MCL 777.56.

²⁴ *Id.*

that does not “alter the appropriate guidelines range” does not require resentencing.²⁵ Thus, any error was harmless.

Affirmed.

/s/ Donald S. Owens
/s/ Michael J. Talbot
/s/ Patrick M. Meter

²⁵ *People v Francisco*, 474 Mich 82, 89 n 8; 711 NW2d 44 (2006).