

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS GRAYSON,

Defendant-Appellant.

UNPUBLISHED

June 3, 2014

No. 306515

Marquette Circuit Court

LC No. 10-048337-FH

Before: BECKERING, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to do great bodily harm less than murder, MCL 750.84, and assault of a prison employee, MCL 750.197c. He was sentenced as an habitual offender, third offense, MCL 769.11, to concurrent prison terms of 114 months to 20 years for assault with intent to do great bodily harm less than murder and 5 to 10 years for assault of a prison employee, to run consecutive to the sentence he was serving at the time the incident occurred. He appeals by right. We affirm.

This appeal arises out of an incident that occurred in the Marquette Branch Prison, where defendant was incarcerated. As defendant and another inmate passed Resident Unit Manager Steven Niemi, Niemi heard defendant spit and assumed defendant had spit on him. Niemi ordered defendant into a housing unit, and defendant complied. Niemi then told Resident Unit Officer Sergeant Eugene Sebaly to secure defendant so he could be taken to segregation for spitting on a prison officer. Defendant testified that he attempted to explain that he did not spit on Niemi because he knew doing so was a serious offense. Niemi testified that defendant made it clear that he would not comply with going to segregation, but defendant did agree to sit in a chair. Niemi called for backup to get the situation under control.

As defendant was sitting, Sebaly ordered him to “cuff up,” or put his hands behind his back so he could be handcuffed, but defendant refused. At some point, several officers saw defendant retrieve something from his waistband. Defendant then moved toward Sebaly and placed his hands on the officer’s neck. Niemi testified that defendant “lunged at” Sebaly. Defendant denied lunging at anyone, and testified that Sebaly had been the initial aggressor and grabbed defendant by the neck, at which point defendant pushed Sebaly off. However, defendant admitted that a struggle ensued. The other officers assisted Sebaly in subduing defendant, who was then taken to segregation. Sebaly sustained razorblade cuts to a hand and

his neck. A razorblade was discovered on the floor in the area where the altercation had occurred. Defendant testified that he never possessed or saw the razorblade and did not know how Sebaly was injured. Ultimately, defendant was identified as the major donor for the DNA found on the non-cutting edge of the razorblade, and Sebaly was identified as the minor donor. A nurse testified that the cuts sustained by Sebaly were not life-threatening.

Defendant argues that the evidence was insufficient to support his conviction for assault with intent to do great bodily harm less than murder. We disagree.

Assault with intent to do great bodily harm less than murder requires a prosecutor to prove the following elements: (1) an attempt with force or violence to do bodily harm to another and (2) an intent to do great bodily harm less than murder. *People v Russell*, 297 Mich App 707, 721; 825 NW2d 623 (2012). We review the evidence de novo in a light most favorable to the prosecution to determine whether a rational trier of fact could have concluded that all the elements of the crime were proved beyond a reasonable doubt. *People v Ericksen*, 288 Mich App 192, 195-196; 793 NW2d 120 (2010). We “draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). A reviewing court may not interfere with a fact-finder’s decision regarding the weight of the evidence or the credibility of witnesses. *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012). A jury may rely on circumstantial evidence and reasonable inferences when determining whether all the elements of a crime were proved. *Nowack*, 462 Mich at 400.

Defendant was seen reaching toward his waistband while he was sitting in the chair in the unit. Defendant then went toward Sebaly (“lunged at,” according to Niemi). Sebaly stated that when he emerged from the altercation with defendant, he “could still feel the razorblade[]” inside his hand, and he “felt a burning sensation” on his neck. A razorblade was discovered on the floor in the area soon after the altercation. According to the officer who found the razorblade, no one touched it before it was taken to evidence and no other prisoner entered the area where the incident took place, supporting the inference that defendant was responsible for bringing the razorblade into the unit. Additionally, defendant’s DNA was found on the razorblade as the major donor, and Sebaly’s DNA was found as the minor donor. All of the above evidence, presuming it is believed by the jury, is sufficient to establish the essential elements of assault with intent to commit great bodily harm less than murder beyond a reasonable doubt.

Defendant argues two reasons to the contrary, neither of which has merit. First, defendant contends that the “superficial” injuries sustained by Sebaly show that he could not have intended to inflict great bodily harm. Lack of success is not proof of lack of intent. Furthermore, the testimony established that a razorblade can inflict serious injury. It is a matter of common knowledge that cutting a person’s neck can be extremely dangerous. The treating nurse explained that a cut to a major blood vessel in the neck could result in a person bleeding out rapidly. In any event, “it is not necessary for any actual injury to occur.” *People v Dillard*, 303 Mich App 372, 378; ___ NW2d ___ (2013). The jury could properly have deduced from the location of Sebaly’s injuries and the mechanism by which those injuries were inflicted the requisite intent to cause great bodily harm.

Second, defendant argues in effect that the jury should have believed his alternate explanation of what transpired during the incident, under which Sebaly was the aggressor. He notes that no video recording of the incident was captured, no razorblade had been found when he was searched immediately prior to the incident, and his pants were never examined to determine if a razorblade could actually have been hidden in the waistband. While defendant's narrative is not inherently implausible, it is irrelevant. A credible version of events found by the jury is not invalidated by the mere existence of another credible version of events. The jury is the final authority on the credibility of witnesses, not the parties or a reviewing court. *Eisen*, 296 Mich App at 331. Furthermore, a prosecutor need not disprove every possible theory of innocence, but need only prove each element beyond a reasonable doubt in the face of any contradictory evidence provided by the defendant. *Nowack*, 462 Mich at 400.

Affirmed.

/s/ Jane M. Beckering
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra