

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
June 19, 2014

v

WILLIE GENE YOUNGBLOOD,
Defendant-Appellant.

No. 315703
Saginaw Circuit Court
LC No. 12-037154-FC

Before: CAVANAGH, P.J., and OWENS and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right from his jury convictions of felon in possession of a firearm, MCL 750.224f, first-degree home invasion, MCL 750.110a(2), conspiracy to commit first-degree home invasion, MCL 750.110a(2) and MCL 750.157a, assault with intent to murder, MCL 750.83, conspiracy to commit assault with intent to murder, MCL 750.83 and MCL 750.157a, carrying a dangerous weapon with unlawful intent, MCL 750.226, and three counts of felony-firearm, MCL 750.227b. We affirm, but remand to the trial court for the ministerial task of correcting the judgment of sentence.

Defendant argues on appeal that the evidence was insufficient to convict him of assault with intent to murder and each conspiracy offense. We disagree.

We review de novo a challenge to the sufficiency of the evidence. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). In determining whether the prosecutor has presented sufficient evidence to sustain a conviction, an appellate court is required to take the evidence in the light most favorable to the prosecutor to ascertain whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010). Direct and circumstantial evidence, as well as all reasonable inferences that may be drawn, are considered. *People v Hardiman*, 466 Mich 417, 429; 646 NW2d 158 (2002).

The elements of assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *Ericksen*, 288 Mich App at 195-196. Assault with intent to murder is a specific intent crime which requires a finding that the defendant acted with the actual intent to kill. Defendant argues that he could not have been convicted of assault with intent to murder because it was not demonstrated that he intended to murder anyone. See *People v Taylor*, 422 Mich 554, 567-568; 375 NW2d 1 (1985). The

intent to kill may be inferred from any facts in evidence. *People v Barclay*, 208 Mich App 670, 674; 528 NW2d 842 (1995). Because it is difficult to prove an actor's state of mind, minimal circumstantial evidence is sufficient to demonstrate intent. *Ericksen*, 288 Mich App at 197.

The jury may infer an intent to kill "from the manner of use of a dangerous weapon." *People v Dumas*, 454 Mich 390, 403; 563 NW2d 31 (1997). Defendant was seen outside a window shooting into an apartment housing three adults and two children. A witness saw one bullet strike above the kitchen stove. Two spent shell casings were found in the area from which defendant was shooting and two bullet holes were found in the window. As the other assailant pursued Ashley Williams through the apartment while shooting and announcing his intention to kill her, defendant entered the apartment and joined that assailant at the patio door through which Ashley fled. Three spent shell casings from the same gun that was fired outside the window were recovered inside the apartment.

Defendant argues that the evidence did not establish that Ashley was his target and relies on testimony from Chanquiece Moten that defendant appeared to be shooting on top of, or over "her." However, it is clear that the "her" referenced by Moten was Karen Williams, and the jury found defendant not guilty of assault with intent to murder Karen Williams. Further, an intent to kill may exist even if it is not directed at any particular victim. *People v Abraham*, 234 Mich App 640, 658; 599 NW2d 736 (1999).

In sum, defendant's use of his gun and pursuit of those in the apartment while shooting was evidence sufficient to infer the intent to kill.

Defendant argues that each of his conspiracy convictions are unsupported because there was no evidence that he agreed to participate in any crime. Establishing a conspiracy requires evidence of specific intent to combine with others to accomplish an illegal objective. *People v Izarraras-Placante*, 246 Mich App 490, 493; 633 NW2d 18 (2001). There must be proof showing that the parties specifically intended to further, promote, advance, or pursue the unlawful objective. *People v Justice (After Remand)*, 454 Mich 334, 347; 562 NW2d 652 (1997). A conspiracy may include an implied agreement between two or more persons to commit an unlawful or criminal act. *People v Barajas*, 198 Mich App 551, 553-554; 499 NW2d 396 (1993). It is not necessary that each defendant have knowledge of all the ramifications of a criminal conspiracy. *People v Hunter*, 466 Mich 1, 7; 643 NW2d 218 (2002). A person may be involved in a continuing conspiracy by knowingly cooperating to further the criminal object of the conspiracy. *Id.* "[D]irect proof of the conspiracy is not essential; instead, proof may be derived from the circumstances, acts, and conduct of the parties." *People v Lowery*, 274 Mich App 684, 693; 736 NW2d 586 (2007), quoting *Justice*, 454 Mich at 347 (alteration by *Lowery* Court).

Defendant argues that he could not have been convicted of conspiracy because there was no evidence of an explicit agreement to commit a home invasion or an assault. He does not argue that he did not commit the underlying offenses, just that he did not agree to commit them with his accomplice. However, defendant and his accomplice were known associates. And defendant was shooting into the residence from one end while his accomplice entered the residence from the other end and began shooting. What conspirators actually did in furtherance of the conspiracy is evidence of what they had agreed to do. *Id.* Here, the apparently

coordinated actions of defendant and his accomplice are evidence of their agreement to commit the crimes. The direct and circumstantial evidence, as well as all reasonable inferences that may be drawn, when viewed in a light most favorable to the prosecution, is sufficient to support defendant's conviction for conspiracy to commit assault with intent to murder and conspiracy to commit first-degree home invasion beyond a reasonable doubt. *Hardiman*, 466 Mich at 429.

Defendant next argues that his convictions for conspiring to commit the offenses underlying the conspiracies violate double jeopardy protections. We disagree. "It is 'black-letter law' that conspiracy and the underlying substantive offense are separate and distinct crimes." *People v Rodriguez*, 251 Mich App 10, 18-19; 650 NW2d 96 (2002). It does not violate the double jeopardy clause to sentence a defendant to prison terms for conspiracy to commit an underlying substantive offense and conspiracy to commit that offense, even if committed in the same criminal transaction. *People v Denio*, 454 Mich 691, 712; 564 NW2d 13 (1997).

Defendant next argues that the trial court erred in excluding a note he received from the other assailant. The note stated, "[Y]ou know that you wasn't there, so we should be good." He argues that exclusion of the note deprived him of the right to present a defense to the charges. We disagree.

Defendant's challenge to the evidentiary decision is preserved and reviewed for an abuse of discretion. *People v Holtzman*, 234 Mich App 166, 190; 593 NW2d 617 (1999). The trial court abuses its discretion when it chooses an outcome outside the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Because the constitutional argument is not preserved, our review is for plain error affecting substantial rights. *People v Odom*, 276 Mich App 407, 413; 740 NW2d 557 (2007). Reversal is warranted only when plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.*

Defendant's trial counsel argued that the note was admissible because it was a statement of a co-conspirator, MRE 801(d)(2)(E), or a statement of a party opponent, MRE 801(d)(2)(b), or under the general "catch-all" exception to the hearsay rule, MRE 803(24). The trial court found the statement was not admissible because it was not offered against defendant or his accomplice, and the note did not have any guarantees of trustworthiness. On appeal, defendant argues that the note was admissible under MRE 803(24).

"'Hearsay' is a statement, other than one made by the declarant while testifying, offered in evidence to prove the truth of the matter asserted." MRE 801(c); see also *People v Stamper*, 480 Mich 1, 3; 742 NW2d 607 (2007). Hearsay is generally not admissible unless it meets the requirements of one of the hearsay exceptions set forth in the Michigan Rules of Evidence. MRE 802; *Stamper*, 480 Mich at 3. Because the statement was made in a note by a non-testifying declarant, and was offered for its truth, it was hearsay.

According to MRE 803(24), a statement not admissible under any of the enumerated hearsay exceptions, "but having equivalent circumstantial guarantees of trustworthiness," may be admitted where the trial court determines that "(A) the statement is offered as evidence of a material fact, (B) the statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts, and (C) the general

purpose of these rules and the interests of justice will best be served by admission of the statement into evidence.” *People v Yost*, 278 Mich App 341, 391; 749 NW2d 753 (2008).

Defendant claims that the requirements of MRE 803(24) are satisfied, but argues only that the note involved a material fact that was highly probative, i.e., defendant’s presence at the shootings. Defendant does not explain how the note carries with it circumstantial guarantees of trustworthiness. The note was reportedly authored by defendant’s accomplice while he was incarcerated. This individual was defendant’s known associate prior to the crimes at issue and was charged with crimes stemming from the same circumstances. There was no indication that the author of the note was unavailable to testify and be subject to cross-examination. There was no indication about the motivation for writing the note, although it appears the writer was attempting to convince the recipient not to accept a plea with respect to whatever circumstance was being referenced. There was no indication to what exact circumstances “you wasn’t there” refers. If the reference is to defendant not being at the scene of the charged crimes, it is at odds with an affidavit defendant submitted to the trial court in which he averred that he never left the car outside the apartment when defendant’s accomplice and another man went to the residence. It is proper for a court to exclude a statement where the declarant’s veracity is doubtful or entirely lacking because “the credibility of the declarant inherently affects the trustworthiness of the statement.” *People v Barrera*, 451 Mich 261, 272-273; 547 NW2d 280 (1996) (citations omitted). The trial court did not abuse its discretion in excluding the note from evidence because it was a hearsay statement that lacked “circumstantial guarantees of trustworthiness.”

Further, while defendant has a constitutional right to have a meaningful opportunity to present a complete defense, “the right to present a defense is not absolute or unfettered.” *People v Orlewicz*, 293 Mich App 96, 101; 809 NW2d 194 (2011). See also *People v Likine*, 492 Mich 367, 423; 823 NW2d 50 (2012); *People v King*, 297 Mich App 465, 473; 824 NW2d 258 (2012). Rather, that right is subject to reasonable restriction and may “bow to accommodate other legitimate interests in the criminal trial process.” *Id.* For example, it may be limited by “established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.” *People v Toma*, 462 Mich 281, 294; 613 NW2d 694 (2000). The interests served by the hearsay rules and its exceptions are to allow for the admission of evidence that is trustworthy and limit admission of untrustworthy evidence. *People v Katt*, 468 Mich 272, 289; 662 NW2d 12 (2003). Here, the note cannot demonstrate its trustworthiness under MRE 803(24). Accordingly, the legitimate purpose of the hearsay rules did not impinge on defendant’s ability to introduce trustworthy evidence.

Finally, defendant argues that the trial court erred by ordering that his sentences for his felony-firearm convictions be served consecutive to crimes which were not underlying the felony-firearm convictions. This argument has merit. A felony-firearm sentence can be served consecutive only to the sentence for the predicate offense, i.e., “the offense during which the defendant possessed a firearm.” *People v Clark*, 463 Mich 459, 463-464; 619 NW2d 538 (2000). Here, the jury found defendant guilty of three counts of felony firearm: (1) one count in which the predicate felony was possession of a firearm by a felon [count 3], (2) a second count in which the predicate felony was assault with intent to murder [count 8], and (3) a third count in which the predicate felony was carrying a dangerous weapon with unlawful intent [count 10]. However, the judgment of sentence provides that the felony-firearm sentences are to be “served concurrent of ea [sic] other; preceding & consecutive to cts 3, 5, 6, 7, 8, 10.” Because the

judgment of sentence is either unclear or incorrect, we remand this matter for the ministerial task of correcting the judgment of sentence consistent with this opinion.

Affirmed, but remanded for the ministerial task of correcting the judgment of sentence. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Donald S. Owens

/s/ Cynthia Diane Stephens