

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
September 11, 2014

v

JABARI DIJON JOHNSON,  
Defendant-Appellant.

No. 315944  
Jackson Circuit Court  
LC No. 12-004711-FC

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Before: MURRAY, P.J., and DONOFRIO and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of assault with intent to commit murder, MCL 750.83; assault of a prison employee, MCL 750.197c; and prisoner in possession of a weapon, MCL 800.283. Defendant was sentenced as a habitual offender, fourth offense, MCL 769.12, to 40 to 60 years' imprisonment for the assault with intent to commit murder conviction, five to ten years' imprisonment for the assault of a prison employee conviction, and six to ten years' imprisonment for the prisoner in possession of a weapon conviction. For the reasons set forth in this opinion, we affirm.

The sole issue to be fully considered on appeal is whether there was sufficient evidence to support defendant's conviction of assault with intent to commit murder. This Court reviews a claim of insufficient evidence de novo, examining 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). "We do not interfere with the jury's assessment of the weight and credibility of witnesses or the evidence, and the elements of an offense may be established on the basis of circumstantial evidence and reasonable inferences from the evidence." *People v Dunigan*, 299 Mich App 579, 582; 831 NW2d 243 (2013) (citations omitted).

To convict a defendant of assault with intent to commit murder, the prosecution must prove beyond a reasonable doubt that the defendant: (1) committed an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Ericksen*, 288 Mich App 192, 195-196; 793 NW2d 120 (2010). In the instant case, defendant challenges the sufficiency of the evidence to establish his intent to kill Michigan Department of Corrections Officer Andrew Keplinger.

The evidence at trial established that Keplinger was assigned to the “J” housing unit where defendant was an inmate. According to testimony produced at trial, on June 3, 2012, Keplinger located prison-made alcohol in defendant’s jail cell, stored in a duffel bag. When Keplinger opened the container to inspect the banned substance, the liquid burst causing items in defendant’s cell to become dampened. Defendant became agitated after concluding Keplinger’s actions were spiteful. Approximately 30 minutes later, Keplinger walked past defendant’s cell and defendant stated: “Why don’t you come in this room right now and we’ll settle this because only one of us is coming out alive.” Keplinger declined the invitation. Seconds later, Keplinger heard a loud bang behind him and when he turned around, he saw that defendant had tampered with his cell door and was able to break free. As defendant got closer to Keplinger, he brandished a razor blade and stated: “I’m going to slice your throat and kill you.”

While defendant was attacking Keplinger, the razor blade defendant was wielding made contact with Keplinger’s earlobe, cheek, and face. Defendant positioned himself on top of Keplinger and continued to attempt to drive the razor blade into his throat. Keplinger was able to prevent this by leveraging his right foot into defendant’s crotch area. Several other officers in close proximity arrived in a matter of minutes after receiving a duress call from Keplinger’s personal protection device and advised defendant to drop the razor blade. In response, defendant continued to hold the razor blade to Keplinger’s throat and stated: “Stand back or I’ll cut him, kill him.” After defendant was surrounded by four officers and instructed a second time to drop his weapon, he dropped the razor blade to the ground. The last thing defendant said to Keplinger was: “You’re lucky motherfucker.” As a result of the assault, Keplinger sustained a puncture wound, two superficial cuts to the side of his face, a concussion, and lower back injuries.

“Because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient” to establish that a defendant had the requisite specific intent to kill. *Ericksen*, 288 Mich App at 197. Here, the record contains more than circumstantial evidence. Indeed, the record reflects several examples of direct evidence that defendant acted with the intent to kill. Defendant stated: “I’m going to slice your throat and kill you,” and “[w]hy don’t you come in this room right now and we’ll settle this because only one of us is coming out alive.” Even after other officers had arrived at the scene of the assault, defendant continued to verbalize his intentions by warning the officers to: “Stand back or I’ll kill him.” Then, after defendant had dropped the weapon he told the victim: “You’re lucky motherfucker” which a reasonable juror could infer meant that the victim was lucky to be alive. Hence, if the jury believed defendant made any one of these statements, there was sufficient evidence for a jury to conclude the requisite intent to kill existed.

Assuming that the jury did not believe defendant made any of the afore quoted statements attributed to him, we would still find sufficient evidence on whether defendant possessed the intent to kill the victim. The intent to kill can be inferred from the totality of a defendant’s statements, conduct, and choice and use of a weapon. *People v Taylor*, 422 Mich 554, 567-568; 375 NW2d 1 (1985). The evidence at trial established that defendant tampered with his cell lock to gain access to Keplinger after having made unequivocal threats to Keplinger’s life. Having finally reached a point where defendant could carry out his threats, defendant did not hesitate to try and drive his razor blade into Keplinger’s vital body parts. Furthermore, where there are injuries sustained to a victim’s neck and facial area, combined with threats to kill the victim, this Court has held there to be sufficient evidence to support a finding that a rational trier of fact

could have found that the element of intent to commit murder was proven beyond a reasonable doubt. *People v McRunels*, 237 Mich App 168, 182; 603 NW2d 95 (1999). As previously mentioned, Keplinger sustained lacerations to his face, a concussion, and lower back injuries caused by defendant after his life was threatened numerous times. Therefore, there is sufficient evidence in the record to support a finding that defendant acted with the requisite intent to kill.

Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt that sufficient evidence was presented at trial to conclude defendant intended to kill Keplinger. See *Taylor*, 422 Mich at 567-568; *McRunels*, 237 Mich App at 182.

Defendant also speculates that defendant's actions may have been legally justified, thus, undermining the third element of assault with intent to commit murder (i.e., if defendant's actions were successful, would make the killing murder.) To establish the commission of a murder, the prosecution must prove that a defendant acted without legal justification or excuse. *People v Mendoza*, 468 Mich 527, 533-534; 664 NW2d 685 (2003). "Homicide is 'justifiable' if it is authorized (e.g., self-defense) or commanded (e.g., execution of a death sentence) by law. Homicide is 'excusable' if the death is the result of an accident and the actor was not criminally negligent." *People v Morrin*, 31 Mich App 301, 310; 187 NW2d 434 (1971). We note that defendant failed to preserve this issue for appeal because it was not raised in the statement of issues presented. *People v McMiller*, 202 Mich App 82, 83 n 1; 507 NW2d 812 (1993). In any event, we find no merit in defendant's argument. Defendant's cellmate testified that defendant and Keplinger had argued in the past. However, Keplinger's prior actions do not constitute legal justification or excuse for defendant to attack. There was no evidence presented that defendant's actions were justified or defendant's actions were the result of an accident and not criminally negligent.

Lastly, defendant claims that the jurors were initially improperly informed of their option to find him guilty of a lesser included offense. Again, defendant failed to preserve this issue for appeal because it was not raised in the statement of issues presented. *People v Anderson*, 284 Mich App 11, 16; 772 NW2d 792 (2009). Moreover, defendant's appellate brief does not contain any argument or citation of law regarding an issue of a lesser included offense or jury instructions. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

Affirmed.

/s/ Christopher M. Murray  
/s/ Pat M. Donofrio  
/s/ Stephen L. Borrello