

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHNNIE P. BOND,

Defendant-Appellant.

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UNPUBLISHED

August 26, 2003

No. 239979

Wayne Circuit Court

LC No. 01-002097-01

Before: Donofrio, P.J., and Bandstra and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of assault with intent to commit murder, MCL 750.83, for which he was sentenced to serve a term of fourteen to twenty-five years’ imprisonment.<sup>1</sup> We affirm.

This case arises from a stabbing that left the victim confined to a nursing home, unable to speak or even breathe without medical assistance. At trial, defendant testified that the stabbing was perpetrated in self-defense after the victim, who was his girlfriend, intentionally caused the onset of a severe and life-threatening asthma attack by repeatedly spraying defendant with cologne then thwarting his efforts to leave the couple’s apartment to obtain fresh air. On appeal, defendant challenges the sufficiency of the evidence to support his conviction, as well as the validity of the sentence imposed.

I. Sufficiency of the Evidence

Defendant first argues that the prosecution failed to present sufficient evidence to prove beyond a reasonable doubt that defendant was not acting in self-defense when he stabbed the victim. We disagree. In reviewing the sufficiency of the evidence in a criminal case this Court must view the evidence produced at trial in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). Circumstantial evidence and the reasonable inferences drawn therefrom may be

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<sup>1</sup> The trial at issue here was the second of two on the charged offense of assault with intent to commit murder, the first having resulted in a mistrial after the jury was unable to reach a verdict.

sufficient to prove the elements of the crime. *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997). Here, we conclude that the evidence was sufficient to negate defendant's claim of self-defense beyond a reasonable doubt.

To be successful, a claim of self-defense requires proof that the defendant honestly and reasonably believed that he was in imminent danger of death or serious bodily harm, that the action taken appeared at the time to be immediately necessary, and that the defendant did not use any more force than was necessary to defend himself. *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002). Proof that a defendant did not hold an honest and reasonable belief of imminent danger is sufficient to defeat a claim of self-defense. See *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

In this case, defendant candidly testified on cross-examination that he did not view the situation in his apartment that night as "kill or be killed" and that, therefore, he did not believe that it was immediately necessary for him to kill the victim in order to stop the alleged assault against him. Defendant further acknowledged that he could have easily moved the victim when she blocked his attempt to leave the apartment only moments before the stabbing. This testimony, when viewed in a light most favorable to the prosecution, was sufficient to negate beyond a reasonable doubt that the action taken by defendant, i.e., stabbing the victim in her chest with a eight-inch butcher knife, was immediately necessary. *Riddle, supra*. Defendant's testimony in this regard similarly precludes any rational finding that defendant used only that amount of force necessary to defend himself against an alleged attack by the victim. *Id.*

Moreover, in addition to defendant's own testimony, there was other evidence offered at trial that reasonably cast doubt on defendant's claim that the stabbing was perpetrated in self-defense. For instance, a forensic pathologist testified that lacerations on the victim's forearms and biceps were defensive in nature, suggesting that the attack on the victim was other than self-protective or, at the very least, perpetrated with more force than necessary to counter the assault alleged by defendant. There was also evidence indicating that, despite his claim that the stabbing resulted from the victim having intentionally caused the onset of a severe and life-threatening asthma attack by spraying him with cologne, defendant was not in any respiratory distress and did not smell of cologne when the police arrived at the apartment only moments after the stabbing. Finally, there was expert testimony that, had the stabbing occurred in the kitchen after the victim thwarted his attempt to leave the apartment, as claimed by defendant, there would have been blood in the kitchen but no blood or even sign of a struggle was found in that area. In light of this evidence contradicting defendant's version of the events that led to the stabbing, we find no merit in defendant's claim that the evidence at trial was insufficient to defeat his claim of self-defense.

Defendant also argues, however, that regardless of the success of his self-defense claim the evidence at trial was insufficient to support a conviction of assault with intent to murder. Again, we disagree.

"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." *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Here, defendant challenges the evidence in support of the third element, arguing that the prosecution failed to produce evidence sufficient to show that if successful the killing would have constituted murder. More

specifically, defendant argues that even when viewed in the light most favorable to the prosecution the evidence shows that he acted under the influence of passion or hot blood and thus, had the victim died, the homicide would have constituted at most only voluntary manslaughter. However, the defendant's intent to kill or inflict serious bodily harm is an essential element of the crime of voluntary manslaughter. See *People v Hess*, 214 Mich App 33, 38; 543 NW2d 332 (1995). Here, defendant repeatedly testified that he never intended to stab or otherwise harm the victim, claiming that the stabbing was the unfortunate result of his pushing the victim away while in an asthma induced panic and while unknowingly holding the knife. Such testimony is inconsistent with defendant's claim, raised for the first time on appeal, that the victim's death would have constituted only voluntary manslaughter. *Id.* Further, as summarized above, the record includes ample evidence sufficient to support a finding that, just as defendant did not act in self-defense, neither did he act under the influence of passion or hot blood. Accordingly, we reject defendant's claim that the evidence was insufficient to support his conviction of the charged offense of assault with intent to commit murder.

## II. Validity of Defendant's Sentence

Before trial, the trial court indicated that it would impose a minimum sentence of five years should defendant accede to the prosecutor's offer to accept a plea of no contest on the charge of assault with intent to murder. Defendant, however, rejected the plea offer and, after his jury trial conviction, the trial court sentenced defendant to a minimum term of fourteen years' imprisonment. Defendant argues that he is entitled to resentencing because the increase in his minimum sentence following trial was impermissibly exacted as punishment for exercising his constitutional right to a jury trial. We disagree.

Although a defendant may not be penalized for exercising his constitutional right to a jury trial, see *People v Mosko*, 190 Mich App 204, 211; 475 NW2d 866 (1991), it is not per se unconstitutional for a defendant to receive a higher sentence on a trial conviction than was promised him if he would plead guilty, *People v Rivers*, 147 Mich App 56, 60-61; 382 NW2d 731 (1985). As observed by this Court in *People v Sickles*, 162 Mich App 344, 365-66; 412 NW2d 734 (1987):

Unless there is something in the record which indicates the higher sentence was imposed as a penalty for the accused's assertion of his right to trial by jury, the sentence imposed will be sustained. . . .

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[Moreover, w]here the court offers a different reason for the sentence imposed than the reason asserted by the defendant, a reviewing court will not assume the sentence was imposed in retaliation for rejection of an initially offered plea. [Citations omitted.]

Here, the trial court's remarks at sentencing fail to disclose anything to support defendant's claim that a longer sentence was imposed because defendant rejected the prosecutor's plea offer and elected to proceed to trial. Rather, as the trial court observed, the sentence was within the range recommended by the sentencing guidelines, the accuracy of which defendant conceded below and does not challenge on appeal. Accordingly, we reject defendant's

contention that the sentence was imposed in retaliation for his decision to reject the plea offer and proceed to trial.

Defendant also argues that his sentence of fourteen to twenty-five years' incarceration is improper because there is no way that he can be expected to outlive his sentence. Defendant acknowledges that the case he relies on to argue this position, *People v Moore*, 432 Mich 311; 439 NW2d 684 (1989), has been superceded by *People v Merriweather*, 447 Mich 799; 527 NW2d 460 (1994).<sup>2</sup> Nevertheless, defendant asks us to apply *Moore* in this case. We decline defendant's invitation to ignore the more recent Michigan Supreme Court precedent on this question.

Further, under the legislative sentencing guidelines applicable here, if the minimum sentence imposed is within the guidelines range, we must affirm and may not remand for resentencing absent an error in the scoring of the sentencing guidelines or absent inaccurate information relied upon in determining the defendant's sentence. MCL 769.34(10). As noted above, the fourteen year minimum sentence imposed here was within the appropriate guidelines sentencing range. Accordingly, because defendant does not contend that there were scoring errors or that he was sentenced on the basis of inaccurate information, the sentence must be affirmed. *Id.*

We affirm.

/s/ Pat M. Donofrio  
/s/ Richard A. Bandstra  
/s/ Peter D. O'Connell

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<sup>2</sup> In *Moore*, *supra* at 329, the Court held that a "term of years" sentence which a defendant could not be reasonably expected to serve is invalid because it effectively constitutes a sentence of life imprisonment without parole. However, in *Merriweather*, *supra* at 809-811, the Court implicitly overruled *Moore*, holding that an indeterminate sentence that falls within the permissible range of sentences for the offense at issue is lawful as long as it is proportional. See also *People v Lemons*, 454 Mich 234, 258-259; 562 NW2d 447 (1997). Here, defendant does not challenge the proportionality of his sentence.