

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM OWENS,

Defendant-Appellant.

UNPUBLISHED

July 30, 1996

No. 185239

LC No. 94-009310

Before: Murphy, P.J., and O'Connell and M.J. Matuzak,* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of assault with intent to murder, MCL 750.83; MSA 28.278. Defendant was sentenced to a term of four to fifteen years in prison. We affirm.

Defendant argues that there was insufficient evidence to support his conviction. We disagree. In determining whether evidence presented at trial was sufficient to sustain a conviction, this Court, viewing the evidence presented in a light most favorable to the prosecution, must determine whether a rational trier of fact could have found the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

The crime of assault with intent to commit murder requires that the prosecutor prove: (1) an assault, (2) committed with an intent to kill, (3) which, if successful, would support a conviction of murder. *People v Warren*, 200 Mich App 586, 588; 504 NW2d 907 (1994) (citing *People v Lawton*, 196 Mich App 341, 350; 492 NW2d 810 (1992)). Viewed in a light most favorable to the prosecution, the evidence presented in this case was sufficient to support a conviction of assault with intent to murder. Complainant testified that defendant asked her "are you ready to die?" Defendant also stated that he was going to "do the O.J. Simpson." Complainant interpreted defendant's statements to mean that he intended to kill her. Both of these statements were made contemporaneous to the infliction of knife wounds to complainant's neck and hands by defendant. The existence of the ten

* Circuit judge, sitting on the Court of Appeals by assignment.

inch cuts to complainant's neck, when viewed together with defendant's contemporaneous statements, evidences a specific intent to kill. *People v. Brown*, 159 Mich App 428, 432; 407 NW2d 21 (1987).

Defendant further argues that the trial court erred in failing to consider lesser included offenses to the crime charged, that such error violated defendant's right to due process of law as guaranteed by the United States and Michigan Constitutions, and therefore, the conviction below may not be sustained. We disagree.

This Court has held that reversal is mandated where the trial court, sitting as factfinder, fails to consider lesser included offenses argued by the defendant. *People v Maghzal*, 170 Mich App 340, 347; 427 NW2d 552 (1988). Here, however, defendant did not address the issue of lesser included offenses at trial and therefore no error resulted from the trial court's failure to address such alternate theories of culpability. Furthermore, the evidence presented at trial does not support any lesser included offense.

Affirmed.

/s/ William B. Murphy

/s/ Peter D. O'Connell

/s/ Michael J. Matuzak