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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, V DARRYON BECHTEL, Defendant-Appellant.	UNPUBLISHED October 28, 2026 2:26 PM No. 376224 Kalamazoo Circuit Court LC No. 2024-000722-FC

Before: YOUNG, P.J., and REDFORD and FEENEY, JJ.

PER CURIAM.

Defendant, Darryon Bechtel, appeals by right his jury trial convictions of assault with intent to murder (AWIM), MCL 750.83; and carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to serve 9 to 30 years' imprisonment for the AWIM conviction and 2 years' imprisonment for the felony-firearm conviction. On appeal, defendant argues that he did not have the intent to kill, which is an element of AWIM, and that he received a disproportionate sentence even though the trial court sentenced him within the guidelines range. We affirm his convictions and sentences.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arose after defendant fired his weapon at Upjohn Park in Kalamazoo, Michigan, on an afternoon in May 2024.

Clint Bernardo and Laquisha Brown were in domestic relationship for about 14 years and shared a number of children together. Bernardo did not get along with Brown's ex-husband, Steffonne Whitley.

On May 8, 2024, Bernardo and Brown took six children to Uptown Park. The two were unarmed, and the park was relatively busy that day. The family was already at the park when a red truck pulled up and three individuals, later identified as Whitley, Amber Cunningham, and defendant, exited the truck and immediately ran toward Bernardo and Brown. A physical altercation ensued between Cunningham and Brown, while Bernardo was being chased on foot by defendant and Whitley. Defendant fired his weapon at some point, but no person was injured.

After law enforcement arrived, defendant spoke with City of Kalamazoo Public Safety Officer Joe Dusenbery. Defendant admitted that he fired his weapon but maintained that he only fired a "warning shot." Defendant did not tell Officer Dusenbery that he aimed the gun at anyone.

At trial, Bernardo testified that he and Brown went to Upjohn Park on May 8, 2024, to enjoy the nice weather with their children. Bernardo identified defendant as the shooter at trial but explained that he did not know defendant before these events. In Bernardo's recollection, Whitley, Cunningham, and defendant "followed" Bernardo and Brown to the park, then "pulled up in the parking lot and started shooting." Bernardo specifically observed defendant fire his weapon toward him and reported that "several" people were in the line of direction. Bernardo confirmed the exact point at which defendant pointed the gun and shot at him while the prosecutor played the surveillance footage.

Bystander Anna Karpinski testified that she "heard a gunshot and saw a gunshot" from "[p]robably 15, 20 feet" away that day. Karpinski "saw a gun aimed," "saw a flash and then heard the bang of a gunshot." Karpinski did not see who fired the gunshot and did not know any of the individuals involved in the case.

Before trial began, the prosecutor placed a plea offer on the record, offering a lesser charge of assault with intent to do great bodily harm less than murder and felony-firearm and dismissing AWIM. Defendant rejected the plea offer.

Ultimately, the jury found defendant guilty of one count of AWIM and one count of felony-firearm. As stated, the court sentenced defendant to serve 9 to 30 years' imprisonment for the AWIM conviction and 2 years' imprisonment for the felony-firearm conviction. The court stressed that a jury composed of defendant's peers "decided this case" after hearing "all of the testimony" and reviewing all surveillance footage admitted. Despite recognizing defendant's minimal criminal history, the court found the sentence reasonable "based upon deterrence and punishment." Defendant now appeals.

II. ANALYSIS

A. AWIM

Defendant argues that we should vacate his AWIM conviction and remand for resentencing on a lesser charge because there was insufficient evidence that defendant intended to kill. We disagree.

"This Court reviews de novo a defendant's challenge to the sufficiency of the evidence supporting his or her conviction." *People v Lane*, 308 Mich App 38, 57; 862 NW2d 446 (2014). "In analyzing [a] sufficiency claim[], this Court must review the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Powell*, 278 Mich App 318, 320; 750 NW2d 607 (2008) (quotation marks and citation omitted). "The standard of review is deferential: a reviewing court is required to 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). "[T]he prosecution is bound to prove the elements of the crime beyond a

reasonable doubt. It is not obligated to disprove every reasonable theory consistent with innocence to discharge its responsibility . . . in the face of whatever contradictory evidence the defendant may provide." *Id*. (quotation marks and citation omitted).

A conviction unsupported by evidence sufficient to establish guilt beyond a reasonable doubt violates due process and cannot stand. *People v Prude*, 513 Mich 377, 384; 15 NW3d 249 (2024); US Const, Ams V and XIV; Const 1963, art 1, § 17. "To prove assault with intent to murder, the prosecution must show (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Anderson*, 322 Mich App 622, 632; 912 NW2d 607 (2018) (quotation marks and citation omitted). "An assault may be established by showing either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery." *People v Starks*, 473 Mich 227, 234; 701 NW2d 136 (2005). Because AWIM is a specific-intent crime, the fact-finder must find that the defendant acted with an intent to kill. *People v Brown*, 267 Mich App 141, 148-149; 703 NW2d 230 (2005). "Intent to kill may be inferred from all the facts in evidence, including use of a deadly weapon, taking aim at a victim, injury to the victim, evidence of flight and attempts to hide evidence." *People v Everett*, 318 Mich App 511, 531 n 10; 899 NW2d 94 (2017) (quotation marks and citation omitted). "Because it can be difficult to prove a defendant's state of mind on issues such as intent, minimal circumstantial evidence suffices to establish a defendant's state of mind." *People v Kenny*, 332 Mich App 394, 403; 956 NW2d 562 (2020). A defendant's intent to kill "can be gleaned or inferred from his or her actions." *Id*.

In this case, there was sufficient evidence for a reasonable fact-finder to determine that defendant was guilty of AWIM beyond a reasonable doubt. See *Anderson*, 322 Mich App at 632. First, defendant placed others in reasonable apprehension of receiving an immediate battery because he arrived at the park, immediately exited the vehicle, and began running toward Bernardo and Brown with a gun. See *Starks*, 473 Mich at 234. A gun is a deadly weapon. See *Everett*, 318 Mich App at 531 n 10. Bernardo feared that he would be hit by gunfire and testified that he observed defendant aiming his gun at him. Moreover, the surveillance footage shows at least 15 people scattering across the park after defendant fired the gun, which only further demonstrates the level of apprehension of fear that defendant caused multiple people that day.

Second, defendant had the intent to kill. Defendant's argument that he lacked the intent to kill because he fired a warning shot rather than aimed to kill is contrary to the video surveillance and testimony presented at trial. The video shows defendant, Whitley, and Cunningham arrive at the park in a truck and immediately head toward the playground area on foot. See *Kenny*, 332 Mich App at 403. Bernardo and Brown did not have weapons, yet defendant sought out Bernardo and chased him with a gun. Considering the factual circumstances, an intent to kill can be inferred from defendant's actions depicted on video. See *id*. Finally, if defendant would have been successful in that attempted battery, it could have made the killing murder. See *Anderson*, 322 Mich App at 632.

Although defendant "affirmed that he had shot towards the sky" in his statements to Officer Dusenbery, it was for the jury to assess the weight of the evidence and the credibility of testimony. See *Nowack*, 462 Mich at 400. Defendant carefully curates Officer Dusenbery's testimony with a few conflicting portions of Bernardo's testimony to bolster his claim that he fired a warning shot. But, again, to the extent that the jury listened to the testimony, watched the surveillance footage,

and reviewed all the evidence, it was for the jury to decide how much weight to give each piece of evidence and how much credibility to give the testimony. See *id*.

From this evidence, a rational trier of fact could find beyond a reasonable doubt that defendant possessed the requisite intent to kill Bernardo, as demonstrated by his deliberate act of firing a weapon in broad daylight at a public park where children were actively playing. Accordingly, defendant failed to meet his burden of demonstrating that the evidence was insufficient to sustain his conviction. Reversal is unwarranted. See *Prude*, 513 Mich at 384.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

In a Standard 4 brief,[1] defendant argues that his counsel was ineffective for not requesting that the jury be instructed on the offenses of felonious assault, MCL 750.82, and intentional discharge of a firearm but without malice aimed at or toward another person, MCL 750.234. Because neither of these offenses are necessarily lesser included offenses to AWIM, we do not find that defense counsel's failure to request a jury instruction on them fell below an objective standard of reasonableness.

Claims of ineffective assistance of counsel present a mixed question of law and fact. *People v Riley*, 468 Mich 135, 139; 659 NW2d 611 (2003). A trial court must first find the facts and determine whether those facts constitute a violation of defendant's constitutional right to effective assistance of counsel. Factual findings are reviewed for clear error, while constitutional determinations are reviewed de novo. *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004). However, where, as here, the claim of ineffective assistance was not preserved by filing a motion in the trial court for a new trial, this Court's review is limited to errors apparent on the record. *Id.*

To prevail on a claim of ineffective assistance of counsel, defendant must demonstrate that (1) his trial counsel's performance "fell below an objective standard of reasonableness and (2) but for counsel's deficient performance, there is a reasonable probability that [the] outcome would have been different." *People v Yeager*, 511 Mich 478, 488; 999 NW2d 490 (2023) (quotation marks and citation omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *People v Ackley*, 497 Mich 381, 389; 870 NW2d 858 (2015) (citation omitted).

Defendant bears the burden of demonstrating the factual predicate of an ineffective assistance claim which requires him to "overcome the strong presumption that counsel's performance was born from a sound trial strategy." *People v Trakhtenberg*, 493 Mich 38, 52; 826 NW2d 136 (2012). "We will not substitute our judgment for that of counsel on matters of trial

[1] Administrative Order No. 2004-6 adopted the minimum standards for indigent criminal appellate defense services proposed by the Appellate Defender Commission. A "Standard 4 brief" refers to a pro se brief filed to raise additional claims on appeal against the advice of counsel. *People v Ryan*, 295 Mich App 388, 392 n 1; 819 NW2d 55 (2012).

strategy, nor will we use the benefit of hindsight when assessing counsel's competence." *People v Unger*, 278 Mich App 210, 242-243; 749 NW2d 272 (2008).

At issue here is defendant's right to a properly instructed jury and whether trial counsel failed to request an instruction on these lesser offenses. If these offenses were necessarily lesser included, the right to a jury instruction on them is codified in MCL 768.32(1), which provides in relevant part:

> Except as provided in [MCL 768.32(2)], upon an indictment for an offense, consisting of different degrees, as prescribed in this chapter, the jury . . . may find the accused not guilty of the offense in the degree charged in the indictment and may find the accused person guilty of a degree of that offense inferior to that charged in the indictment, or of an attempt to commit that offense.

Our Supreme Court previously determined that "inferior" as used in this statute "does not refer to inferiority in the penalty associated with the offense, but, rather, to the absence of an element that distinguishes the charged offense from the lesser offense." *People v Wilder*, 485 Mich 35, 41; 780 NW2d 265 (2010) (quotation marks and citations omitted). Thus, a trier of fact may find a defendant guilty of a lesser offense only if the offense is necessarily included in the greater offense, which occurs "when the elements necessary for the commission of the lesser offense are subsumed within the elements necessary for the commission of the greater offense." *Id.* A cognate lesser included offense, in contrast, is "an offense that shares some elements of a higher offense and is of the same class or category as the higher offense, but which may also contain some elements not found in the higher offense." *People v Hendricks*, 200 Mich App 68, 70-71; 503 NW2d 689 (1993), aff'd 446 Mich 435 (1994).

Neither felonious assault, nor the intentional discharge of the firearm are necessarily included lesser offenses of AWIM. "The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). The elements of the misdemeanor crime of discharging a firearm aimed intentionally but without malice, also include the use of a firearm. MCL 750.234. Neither is a necessarily lesser included offense of AWIM because both require the use of a dangerous weapon, which AWIM does not. *People v Vinson*, 93 Mich App 483, 485-486; 287 NW2d 274 (1979); *People v Lowery*, 258 Mich App 167, 173-174; 673 NW2d 107 (2003). Our Supreme Court has found it unlawful to convict a defendant of felonious assault where, as here, the charged offense was AWIM. *People v Otterbridge*, 477 Mich 875, 875; 721 NW2d 595 (2006).

Moreover, even if the trial court would have considered it, the record does not support it. Requests for instruction on a cognate offense may only be given if the record supports it. *Vinson*, 93 Mich App at 486. Defendant, as was his right, did not take the stand and testify on his own behalf. Bernardo, the victim, testified that defendant pointed the weapon at him with the intent to kill and, moreover, described the scene in the park as one in which defendant and two others ran up to him and threw punches at him and his family. Video surveillance from the park showed more than a dozen people scattering when the gunshot was fired. The only statement supporting defendant's position was a statement to a police officer in which defendant claimed he shot a warning shot. The record does not support the inclusion of this cognate offense. "[T]rial counsel

does not perform deficiently by failing to request a jury instruction a trial court could not have given." *People v Nelson*, ___ Mich App ___, ___; ___ NW3d _ (2026) (Docket No. 375156), slip op at 2. Defendant's counsel's failure to request a jury instruction on a conviction of discharging a firearm without malice is not objectively unreasonable.

Moreover, we have recognized that it is sound trial strategy to not request instruction on a lesser included offense. *People v Robinson*, 154 Mich App 92, 93-94; 397 NW2d 229 (1986). "Defense counsel is given wide discretion in matters of trial strategy because many calculated risks may be necessary in order to win difficult cases." *Unger*, 278 Mich App at 242. Here, the trial strategy appears to have been to seek an acquittal through arguments that defendant's actions did not demonstrate the requisite intent to kill the victim, which is a necessary element of AWIM. Defendant did not preserve this issue by objection or motion in the trial court and the record presented to us leaves open this possibility. We do not find defense counsel acted below an objective standard of reasonableness in proceeding to trial on the charges raised in the information alone.

C. PROPORTIONATE SENTENCE

Defendant argues that we should remand for resentencing because the trial court imposed a disproportionate sentence. We again disagree.

We review a challenge to a within-guidelines sentence for reasonableness under *People v Steanhouse*, 500 Mich 453; 902 NW2d 327 (2017). *People v Posey*, 512 Mich 317, 326; 1 NW3d 101 (2023) (opinion by BOLDEN, J.). "[T]he standard of review to be applied by appellate courts reviewing a sentence for reasonableness on appeal is abuse of discretion." *Steanhouse*, 500 Mich at 471. We review de novo a trial court's interpretation of a statute. *People v Shenoskey*, 320 Mich App 80, 82; 903 NW2d 212 (2017).

"Michigan's sentencing guidelines are now advisory only, but trial courts must still consult the guidelines and take them into account during sentencing." *People v Teike*, 348 Mich App 520, 538; 19 NW3d 733 (2023). "[S]entences that fall within the properly calculated guidelines minimum sentence range are rebuttably presumed to be proportionate." *Id*. "[T]he defendant bears the burden of demonstrating that their within-guidelines sentence is unreasonable or disproportionate." *Posey*, 512 Mich at 359. In general, a proportionate sentence is one that considers "the reformation of the offender, the protection of society, the discipline of the offender, and the deterrence of others from committing the same offense." *People v Boykin*, 510 Mich 171, 183; 987 NW2d 58 (2022). See also *Graham v Florida*, 560 US 48, 59; 130 S Ct 2011; 176 L Ed 2d 825 (2010). Other relevant factors to be considered include:

> (1) the seriousness of the offense; (2) factors that were inadequately considered by the guidelines; and (3) factors not considered by the guidelines, such as the relationship between the victim and the aggressor, the defendant's misconduct while in custody, the defendant's expressions of remorse, and the defendant's potential for rehabilitation. [*People v Walden*, 319 Mich App 344, 352-353; 901 NW2d 142 (2017) (quotation marks and citation omitted).]

A defendant may overcome the presumptive proportionality of a within-guidelines sentence by "present[ing] unusual circumstances that would render the presumptively proportionate sentence disproportionate." *People v Bowling*, 299 Mich App 552, 558; 830 NW2d 800 (2013) (quotation marks and citation omitted). "Unusual" means "uncommon, not usual, rare." *People v Sharp*, 192 Mich App 501, 505; 481 NW2d 773 (1992) (quotation marks, brackets, and citation omitted).

Applying these standards to this case, defendant has not overcome the presumption that his within-guidelines sentence was reasonable and proportionate. See *Posey*, 512 Mich at 359. The trial court consulted the guidelines and took them into account at sentencing as evidenced by the court's express acknowledgment of "the guidelines" at sentencing. See *Teike*, 348 Mich App at 538. The recommended minimum sentencing range for AWIM was 108 to 180 months' imprisonment. In this case, the trial court sentenced defendant to serve 9 years—or 108 months—to 30 years' imprisonment; the very bottom of the sentencing guidelines range. See MCL 777.16d; MCL 777.62. Because this sentence is within guidelines, which defendant concedes on appeal, the imposed 9- to 30-year sentence for his AWIM conviction is presumptively proportionate, leaving defendant with the burden to demonstrate that his sentence was unreasonable or disproportionate. See *Posey*, 512 Mich at 359; *Teike*, 348 Mich App at 538.

In this case, defendant failed to articulate unusual circumstances that would render his presumptively proportionate sentence disproportionate. See *Bowling*, 299 Mich App at 558. Even though the court did not articulate each proportionality factor specifically, it did not have an obligation to do so. See *Boykin*, 510 Mich at 183-184. The trial court found defendant's 9- to 30-year sentence reasonable "based upon deterrence and punishment." The court considered the offense and the offender because the court acknowledged defendant's minimal criminal history and a fact pattern that included going to a public park, "getting out of the car and going after someone and pointing a gun and shooting it."

Because defendant's sentence fell within the recommended guidelines, and the presumption of proportionality was not overcome, the trial court did not abuse its discretion. Accordingly, the trial court did not abuse its discretion by sentencing defendant within the minimum sentencing guidelines range for the charges to which the jury convicted him. See *Steanhouse*, 500 Mich at 471.

III. CONCLUSION

On this record, there was sufficient evidence for a rational trier of fact to find that defendant had the intent to kill, and the trial court did not abuse its discretion by sentencing defendant within the recommended guidelines range.

Affirmed.

/s/ Adrienne N. Young
/s/ James Robert Redford
/s/ Kathleen A. Feeney