

No. 1-15-0731

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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| PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County |
| |) | |
| v. |) | No. 12 CR 17437 |
| |) | |
| NOMAD KHAN, |) | Honorable |
| |) | Stanley J. Sacks, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Hyman and Justice Neville concurred in the judgment.

ORDER

¶ 1 *Held:* The State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt of attempted first degree murder.

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¶ 2 Following a bench trial, defendant, Nomad Khan, was convicted of one count of attempted first degree murder of Elizabeth Jackson (720 ILCS 5/8-4(a) (West 2012)); one count of attempting to disarm a peace officer, Sergeant Denogya McElrath (720 ILCS 5/31-1A(b) (West 2012)); three counts of aggravated battery, one count each for each Jackson, Samantha Lewis, and Lovily Willingham (720 ILCS 5/12-3.05(f)(1) (West 2012)); and two counts of aggravated assault, one count each for McElrath and Officer Joe Horvath (720 ILCS 5/12-2(b)(4) (West 2012)). Defendant argues on appeal that the evidence presented at trial was insufficient to prove him guilty of attempted murder beyond a reasonable doubt, as there was no proof of he had the specific intent to kill Jackson.¹ For the following reasons, we affirm.

¶ 3 At trial, Lovily Willingham and Samantha Lewis testified that, at around 2 a.m. on August 18, 2012, they were driving near the intersection of LaSalle and Monroe Streets in Chicago. Willingham testified that she was driving north on LaSalle Street and was preparing to turn left onto Monroe Street. She was slowing down in anticipation of making the turn once the light changed. Willingham and Lewis testified that the next thing they remembered was waking up in a hospital. Recounting the damage to her car, Willingham testified that "the trunk [was] clearly gone, the back of the car. The front driver's side [was] completely totaled." Willingham never saw who hit her car.

¹Defendant does not challenge his other convictions.

¶ 4 Elizabeth Jackson testified that, at approximately 2 a.m. on August 18, 2012, she was working as a security guard and was driving west on Madison Street, waiting at a red light. Jackson was driving a truck bearing her employer's name and was in a uniform, including a nametag, badge, and various patches. A black Nissan, heading south, drove by her at a speed of approximately 90 miles per hour. Less than a minute later, there was a loud crashing sound. Jackson proceeded to her next scheduled stop and, while doing so, came upon an accident at LaSalle and Monroe Streets. Jackson got out of her car to check on the occupants of the two vehicles involved in the crash. A man, later identified as defendant, was the sole occupant of the black Nissan and was slumped over from the impact of the airbag. The two occupants of the second vehicle appeared to be in serious condition. Defendant climbed out of the driver's side window and Jackson tried to speak to him. He yelled something incomprehensible. Jackson told him to take a seat until paramedics arrived. Defendant hit her lightly on her arm with a closed fist.

¶ 5 Jackson testified that defendant then returned to his vehicle and reached through the driver's-side door. He returned to where Jackson was standing, arms folded across his chest. He had a smirk on his face. Jackson reiterated that he should take a seat until paramedics arrived. Defendant again hit Jackson's arm with a closed fist. Jackson noticed defendant was holding a three-to-four-inch knife when he hit her. Defendant turned the blade toward Jackson, gripping it in a fist with the tip pointed downward. Defendant raised the knife in preparation to stab Jackson, so she began to turn to escape the blow. He stabbed her in the back of her right shoulder. As Jackson continued to turn to run, defendant stabbed her in the back. Defendant chased Jackson as she ran to her vehicle. Jackson ran around her vehicle and was eventually able to open a door to create a barrier between her and defendant. At that point, others had arrived and were yelling at

defendant, trying to get him away from Jackson. Jackson was able to get in her vehicle and lock the door. An off-duty police officer arrived at the scene, followed by members of the Chicago police and fire departments. Jackson was taken to a hospital. She was released the same day and her wounds did not require stitches.

¶ 6 Adrian Lomeli and Jesus Garcia testified that, on August 18, 2012, they were working for Stoner Metal in the area of LaSalle and Monroe Streets. Lomeli testified that he and his coworkers were finishing stainless steel window frames on the side of a building overlooking Monroe Street. Around 2 a.m., Lomeli and Garcia heard a loud noise. They went to the corner and saw two vehicles had collided on LaSalle and Monroe Streets. They ran to the accident site. Lomeli testified there were two women in one of the vehicles. Lomeli testified that he first saw defendant sitting in his vehicle, looking dazed and confused. He then saw defendant get out of his car. Garcia testified he first saw defendant when he was already out of his car. Lomeli testified that he attended to the two women who were still in their car.

¶ 7 Lomeli testified that he and his coworkers asked defendant questions but defendant was unresponsive. Lomeli and Garcia testified that a woman, Jackson, arrived and appeared to be a security guard. Lomeli testified that Jackson asked defendant, “[W]hat’s wrong with you? Why were you driving so fast?” and defendant became upset. He observed defendant go to his car and grab something. Defendant returned and Jackson continued asking defendant more questions. Lomeli and Garcia testified that defendant began chasing Jackson and appeared to be punching her in the back. Garcia testified that Jackson was trying to escape defendant by walking around her vehicle. Lomeli testified that he yelled at defendant to stop. Defendant stopped and turned to look at Lomeli. At that point, Lomeli could now see defendant was wielding a knife and realized defendant had not been merely punching Jackson.

¶ 8 Lomeli testified that defendant turned his attention toward him and began lunging at him with the knife. Lomeli backed off and he and others told defendant to drop the knife. Around this time, an off-duty police officer, Horvath, arrived on the scene. Garcia testified that he only realized defendant had been stabbing Jackson when defendant turned toward Horvath. Lomeli and Garcia testified that Horvath, gun drawn, commanded defendant to drop the knife. Defendant ignored Horvath's commands and began chasing Horvath around Horvath's vehicle. Defendant made stabbing motions at Horvath. Lomeli testified that, as defendant went after Horvath, defendant stated, "I'll kill you. I'll kill you. I'll bomb this whole place. You don't know who you're messing with." Defendant repeatedly gestured towards his own forehead and commanded Horvath to shoot him.

¶ 9 Garcia and Lomeli testified that a uniformed member of the Chicago police department, McElrath, arrived in a marked vehicle. McElrath repeatedly ordered defendant to drop his knife. McElrath became defendant's new target. Defendant stabbed at and lunged toward McElrath repeatedly, moving closer to her. Defendant repeatedly asked McElrath to shoot him in the head, gesturing to his forehead as he did so. He got close to McElrath and tried to grab her gun. Lomeli testified that McElrath pulled back before defendant could do so. McElrath continued to plead with defendant to drop his knife, but defendant again reached for her gun. Garcia and Lomeli testified that defendant reached for McElrath's gun again and she shot defendant.

¶ 10 Garcia used his cell phone to produce video recordings of defendant's interactions with the Horvath and McElrath and those videos were admitted into evidence and captured.

¶ 11 Michael Busking and Martin Lally, iron workers for the Chicago Transit Authority (CTA), testified that, at around 2 a.m. on August 18, 2012, they were working near LaSalle and Monroe Streets. They heard a loud noise. They walked and saw that there had been a two-vehicle

collision. One vehicle was occupied by two women. There were two people scuffling in the street, one of whom was later identified as defendant. Busking testified that defendant appeared to be punching a security guard, Jackson, in her side. Busking and Lally testified that defendant was holding a knife pointed at Jackson and was chasing her. They testified that they attempted to divert defendant's attention from Jackson by waving their arms and yelling. Jackson ran back to her vehicle. Defendant began waving the knife around at Busking and Lally.

¶ 12 Busking and Lally testified that another man, Horvath, arrived on the scene. Horvath jumped out of his car, weapon drawn, and ordered defendant to drop his knife. Defendant walked toward the Horvath, asking Horvath repeatedly to shoot him. Everyone kept trying to distract defendant until the police could arrive. A Chicago police officer, McElrath, arrived. She drew her weapon and repeatedly ordered defendant to drop his knife. Defendant approached McElrath, holding the knife in a threatening manner. Lally testified defendant told McElrath he was going to kill her. McElrath kept backpedaling, telling defendant to drop his knife. Defendant repeatedly asked the McElrath to shoot him, pointing to his forehead as he did so. Defendant attempted to grab the officer's weapon, but she pulled back and shot him in the leg. McElrath handcuffed defendant.

¶ 13 Officer Joseph Horvath testified that, at approximately 2 a.m. on August 18, 2012, he was employed as a police officer by the city of Hometown, Illinois. He was off duty and was driving with his girlfriend in his personal vehicle in the area of LaSalle and Monroe Streets. As he approached Monroe Street, he noticed two vehicles had collided and called 911 to report the accident. When he exited his vehicle, he observed a man, later identified as defendant, in the middle of a group by the two vehicles. Horvath began to approach and "saw the [d]efendant[,] in an overhand motion, striking at a female security guard," Jackson. Horvath initially thought

defendant was punching Jackson in a downward motion. As Horvath got closer, he realized that defendant had a knife in his hand and was stabbing Jackson. Horvath announced his office and commanded defendant to drop the knife. Defendant turned away from Jackson and moved toward Horvath. Defendant was still carrying a knife and was raising it as if he were going to stab Horvath. Horvath backpedaled away from defendant, continued to command defendant to drop the knife, and drew his gun.

¶ 14 A uniformed Chicago police officer, McElrath, then arrived in a marked vehicle. Horvath told McElrath there was a man with a knife and directed her toward defendant. McElrath left her vehicle, approached defendant, and commanded him to drop his knife. Defendant walked toward McElrath, pointing the knife at her and raising it in the air, as if in preparation to stab someone. Defendant repeatedly pointed to his forehead and told McElrath to shoot him. Defendant also stated “this is a war, and jihad.” McElrath backpedaled away from defendant McElrath drew her weapon and fired one shot. Defendant was hit and fell to the ground, along with his knife.

¶ 15 Sergeant Denogya McElrath testified that, on August 18, 2012, she was in police uniform and working alone in marked police vehicle. Shortly before 2 a.m. she was called to the area of LaSalle and Monroe Streets for a traffic accident. Before McElrath arrived at the scene, there were additional reports of a man armed with a knife.

¶ 16 When McElrath got to the scene, she saw that two vehicles had collided and there was extensive damage to both vehicles. There was a man, later identified as defendant, swinging a knife in an arc-like motion at several people. There was a group of five or six bystanders. McElrath got within ten feet of defendant, declared her office as a police officer, and ordered him to drop his knife. Defendant turned toward her, extending his arm to point the knife at her. McElrath drew her gun and repeated her order to drop the knife. Defendant walked closer to

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McElrath while she continued to repeat her command. Defendant told McElrath, "Shoot me. Shoot me in the head." Defendant was getting closer to McElrath. McElrath aimed her gun at defendant and pulled the trigger, but her gun did not fire. She reracked her gun and again commanded defendant to drop his knife. Defendant ran at McElrath, getting as close as two feet from her, and made a move to grab her weapon. McElrath shot defendant in his hip. Defendant fell to the ground with the knife still in his hand. One of the bystanders hit the knife out of defendant's hand and McElrath handcuffed defendant.

¶ 17 Katrina Basic, a paramedic for the Chicago fire department, responded to the call involving defendant. When she arrived, defendant was in police custody and had a gunshot wound to his hip. Basic moved defendant into the back of the ambulance and took defendant's medical history. Without solicitation, defendant began telling her about the events that took place that morning. He said he had "called 911, informed them that he was a terrorist. That he was planning to drive his car into another car." Defendant also stated "[h]e was going to attack first responders and stab them." He specifically mentioned attacking police officers. Defendant told Basic he had wanted the police to shoot him in the head. Defendant stated he stabbed a security guard, who he believed to have been a police officer. He stated that he attempted to stab a second female police officer and that he had wanted her to shoot him in the head. He claimed the early morning's events were just the beginning and more attacks would occur on the anniversary of the terrorist attacks of September 11, 2001.

¶ 18 Defendant's motion for a new trial was denied. The court sentenced defendant to fifteen years' imprisonment for the attempted murder of Jackson, five years' imprisonment for attempting to disarm a McElrath, two terms of five years' imprisonment for the aggravated battery of Lewis and Willingham, and two terms of three years' imprisonment for the aggravated

assault of assault of Horvath and McElrath, all sentences to be served concurrently. This timely appeal followed.

¶ 19 Defendant's sole argument on appeal is that the evidence was insufficient to prove him guilty of attempted first degree murder because there was no evidence he had the specific intent to kill Jackson.

¶ 20 Generally, we view a challenge to the sufficiency of the evidence on an element of the charged offense in the light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Amigon*, 239 Ill. 2d 71, 77 (2010). A reviewing court will not overturn the decision of the trier of fact unless it concludes that no rational trier of fact could have found the requisite elements of the offense proven beyond a reasonable doubt. *Id.*

¶ 21 A person commits attempted first degree murder when, acting with the intent to kill, he completes an act which constitutes a substantial step toward the commission of first degree murder. 720 ILCS 5/8-4(a), 9-1(a)(1) (West 2012). In this case, defendant challenges only the sufficiency of the evidence of the element of intent.

¶ 22 Proof of intent to kill may be inferred from surrounding circumstances, such as the character of the attack, the use of a deadly weapon, or the nature and extent of the victim's injuries. *People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 59. " 'Such intent may be inferred when it has been demonstrated that the defendant voluntarily and willingly committed an act, the natural tendency of which is to destroy another's life.' " *People v. Green*, 339 Ill. App. 3d 443, 451 (2003) (quoting *People v. Winters*, 151 Ill. App. 3d 402, 405 (1986)).

¶ 23 Viewing the evidence in the light most favorable to the State, we find there was sufficient evidence to establish that defendant intended to kill Jackson. It is undisputed that, after Jackson

arrived at the scene of the accident, defendant punched her on the arm with a closed fist. Defendant then retrieved a three-to-four inch knife from his vehicle and stabbed Jackson in the back of her right shoulder. Jackson turned to escape from defendant, but she could not do so before defendant stabbed her in the back. Defendant chased Jackson around her vehicle until she was able to open a door and use it as a barrier between her and defendant. Defendant only abandoned his attack of Jackson when others arrived and distracted defendant, at which point he began chasing others with his knife until being shot by McElrath. Moreover, defendant later stated he had intended to stab first responders and police officers and had mistakenly believed Jackson was a police officer.

¶ 24 Defendant's argument that he did not have the specific intent to kill Jackson because "[his] actions throughout the entire incident were consistent with his sole intent of committing suicide by police" is without merit. The trial court specifically considered defendant's ultimate goal of being killed by police and found it was not inconsistent with its finding that defendant also had the specific intent to kill Jackson in the process. As the court explained, defendant's "intent overall was, that night, to be a terrorist or terrorist want-to-be, maybe what that's what he wanted to accomplish; but you can't—you can't forget what happened to get to that point." Further, defendant's assertion that he thought Jackson "would kill him if he made a demonstration of attacking her" is belied by the record. There was no evidence that Jackson had a weapon or that defendant asked her to shoot him, as he did with others.

¶ 25 Defendant analogizes the facts in this case to two cases in which the defendants were convicted of attempted murder but had their convictions overturned on appeal because there was insufficient evidence of the defendants' specific intent to kill. First, he compares the facts in *People v. Brown*, 2015 IL App (1st) 131873, to those in this case. In *Brown*, the defendant

stabbed the victim in the back four times after she walked into the room to inform the defendant that he had to move out of her apartment. *Id.* at ¶ 3. The victim testified that, when she turned to leave the room, she felt pressure on her back and, shortly thereafter, realized she was injured when she felt moisture running down her back and found she was bleeding. *Id.* She immediately left her apartment and drove to a police station. *Id.* The victim went to the hospital and received stitches for her wounds but was released the same day. *Id.* at ¶ 5. We determined on appeal that the evidence did not support an inference that the defendant had the specific intent to kill the victim and noted the absence of any struggle or threats between the victim and defendant, the superficiality of the victim's wounds, and the fact there was no evidence "defendant attempted to pursue her or cause her further injury." *Id.* at ¶ 16.

¶ 26 We find the case *sub judice* is distinguishable from *Brown* because, while Jackson only sustained superficial wounds like the victim in *Brown*, we agree with the trial court's statement in this case that the superficiality of Jackson's wounds "wasn't for the lack of effort on [defendant's] part." Here, defendant not only stabbed Jackson twice, he chased her with his knife when she tried to escape and only abandoned his attack when distracted by bystanders who were trying to help Jackson.

¶ 27 Defendant also compares the facts at bar to those in our supreme court's holding in *People v. Mitchell*, 105 Ill. 2d 1 (1984). In *Mitchell*, the defendant was frustrated after an argument with her boyfriend and began "hitting [her 16-month-old child] several times with her hand, fist and a belt." *Id.* at 7. The next morning, the defendant struck her child multiple times with an open hand when her child misbehaved. *Id.* at 8. Shortly after the second beating, the child had a seizure and passed out. *Id.* The defendant placed a cool cloth on the child's forehead, and 15 minutes later, when the child was still unconscious, she took the child to the hospital. *Id.*

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The appellate court reversed the defendant's attempted first degree murder conviction because "defendant was at home with the defenseless child and had the perfect opportunity to rid herself of the child by killing her if that was in fact what she intended." *People v. Mitchell*, 116 Ill. App. 3d 44, 49 (1983), *aff'd in part, rev'd in part*, 105 Ill. 2d 1 (1984). Our supreme court agreed there was no specific intent, as "[t]here was ample opportunity for her to complete her crime if, in fact, she intended to kill the child." *Mitchell*, 105 Ill. 2d at 10.

¶ 28 We find the facts here are unlike those in *Mitchell*. Defendant did not have the same opportunity to complete his killing of Jackson because, unlike the defendant in *Mitchell*, he only abandoned his attack because others arrived on the scene. Also, in contrast to *Mitchell*, defendant did not attempt to mitigate the wounds he caused Jackson or take her to the hospital. We thus find defendant's actions are distinguishable from *Brown* and *Mitchell* and support the inference that defendant intended to kill Jackson.

¶ 29 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 30 Affirmed.