

## COA Opinion: Court Affirms Assault Conviction

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16. April 2010 By Nicole Mazzocco

On April 15, 2010, the Michigan Court of Appeals published its opinion in *People v. Erickson, No. 288496*. Erickson appealed his conviction of assault with intent to murder under MCL § 750.83, arguing (1) insufficient evidence; (2) prosecutorial misconduct; (3) sentencing error; and (4) ineffective assistance of counsel. The court affirmed Erickson's conviction, remanding to the trial court for a ministerial correction of the judgment to include time served.

Erickson and several friends confronted the victim regarding a fight the victim had with Erickson's friend's sister. During the confrontation, Erickson stabbed the victim multiple times in the back. The victim was severely injured and his legs were amputated. A jury convicted Erickson of assault with intent to murder under MCL § 750.83.

On appeal, Erickson first argued that the prosecutor had submitted insufficient evidence at trial because the prosecutor's case rested heavily on circumstantial evidence. The court disagreed, noting that circumstantial evidence may support a conviction.

Second, Erickson asserted that prosecutor engaged in misconduct because the prosecutor (1) described the victims current injuries in his opening and closing statements; (2) injected his personal views into the case; (3) stated that the multiple stab wounds showed an intent to murder as opposed to an intent to inflict only great harm; and (4) questioned a police officer regarding the consistency of Erickson's friend's testimony. The court held none of these acts amounted to misconduct. The victim's injuries were consistent with trial testimony and not overly prejudicial. The prosecutor did not interject his personal views into the case when he merely described the evidence. The multiple stab wounds were reasonably used and referenced to support an intent to murder. And the prosecutor properly questioned the police officer regarding the consistency of Erickson's friend's testimony where Erickson argued that his friend's testimony was inconsistent.

Third, Erickson challenged his life sentence on several grounds. One, he argued that the trial court judge had engaged in impermissible fact finding under *Blakey v. Washington*, 542 U.S. 296 (2004). The court quickly dismissed this argument, noting that *Blakey* does not bind Michigan courts and Michigan courts have consistently rejected it. Two, Erickson challenged the trial court's scoring of offense variables. The trial court assessed points for Erickson's attempts impede the police investigation and for the serious psychological injury to Erickson's victim. The court held these assessments proper.

Fourth, Erickson argued that he had received ineffective assistance of counsel because his attorney had failed to object to the above-mentioned instances of prosecutorial misconduct and the trial court's scoring of offense variables. The court held this argument without merit because as noted above the prosecutor did not engage in misconduct and the trial court properly scored the offense variables.