

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY JONES,

Defendant-Appellant.

UNPUBLISHED

August 21, 1998

No. 198144

Muskegon Circuit Court

LC No. 96-139285 FH

Before: Doctoroff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from a jury trial conviction of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. Defendant was sentenced as an habitual offender, second offense, MCL 769.10; MSA 28.1082, to eight to fifteen years in prison. We affirm.

On appeal, defendant argues that the evidence was insufficient to sustain his conviction. We disagree. When reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Credibility issues are for the trier of fact to resolve and this Court will not attempt to resolve them anew on appeal. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990).

The elements of assault with intent to do great bodily harm less than murder are (1) an attempt or threat with force or violence to do corporal hurt to another (an assault), and (2) an intent to do great bodily harm less than murder. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). An intent to harm the victim may be inferred from a defendant's conduct. *Id.* Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient to prove intent. See *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984). In this case, the prosecution presented evidence that defendant participated in a group attack on the victim during which the victim was punched, kicked, and hit with a metal baton on the back of the head two times. The evidence

included testimony that when it appeared the attack had ended, and as the victim attempted to escape from the attackers, defendant told the other attackers to move out of the way so that defendant could “slam” the victim. Witnesses testified that defendant grabbed the victim, picked him up, turned him head down, and dropped or “body slammed” him onto the street pavement on his head, neck and shoulder. As a result of the “body slam,” the victim was rendered unconscious. He also suffered two chipped teeth and a cut under his chin.

Defendant contends that the “body slam” was merely a show of force, causing minor injuries, and that if he had intended to cause great bodily harm he would have chosen a more effective method of assault. For a defendant to be convicted of this crime, it is not necessary that an injury result from the assault. *People v Harrington*, 194 Mich App 424, 430; 487 NW2d 479 (1992). Moreover, this case is distinguishable from *People v Emerson*, 319 Mich 225; 29 NW2d 161 (1947), upon which defendant relies. In *Emerson*, *supra* at 228, the Court found that “the prosecution’s only proof of the intent lay in the nature of the injuries inflicted.” In contrast, the evidence of defendant’s words and actions apart from the ultimate injury supports a reasonable inference of intent to do great bodily harm. Viewing the evidence and all reasonable inferences in the light most favorable to the prosecution, a rational trier of fact could find that defendant acted with the intent to do great bodily harm less than murder.

Affirmed.

/s/ Martin M. Doctoroff

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot