STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 13, 2001
v	No. 223058 Oakland Circuit Court
LEON ANTHONY IRVING, Defendant-Appellant.	LC No. 99-166087-FC

Before: Saad, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right from jury convictions of conspiracy to commit armed robbery, MCL 750.157a; MCL 750.529, armed robbery, MCL 750.529, and assault with intent to commit great bodily harm less than murder, MCL 750.84. Defendant was sentenced as an habitual offender, second offense, MCL 769.10, to respective prison terms of 17 to 25 years, 17 to 25 years, and 3½ to 20 years. We affirm.

Defendant seeks reversal of his conviction of assault with intent to commit great bodily harm. The issue as stated in the question presented is that the jury's verdict was against the great weight of the evidence. That issue has not been preserved for appeal because defendant did not move for a new trial below. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). The issue as stated in the argument is that the evidence was insufficient to prove each element of the crime beyond a reasonable doubt. That issue has not been preserved because it was not raised in the statement of questions presented. *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000). In any event, we find this issue to be without merit.[1]

The elements of assault with intent to commit great bodily harm less than murder are "(1) an attempt or threat with force or violence to do corporal harm 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). "Great bodily harm means a physical injury that could seriously and

[1] Because the trial court's discretion was not invoked by means of a motion for a new trial, we review the evidence to see if it is sufficient to support defendant's conviction of assault with intent to commit great bodily harm. See *People v Lyles*, 148 Mich App 583, 594; 385 NW2d 676 (1986).

permanently harm the health or function of the body." CJI2d 17.7(4). This is a specific intent crime, *Parcha, supra*, and the defendant's intent may be inferred from all the facts and circumstances surrounding the crime. *People v Lugo*, 214 Mich App 699, 709-710; 542 NW2d 921 (1995). The defendant's intent can be inferred from the defendant's acts, the means employed to commit the assault itself, and the extent of the victim's injuries, although actual physical injury is not a necessary element of the crime. *People v Harrington*, 194 Mich App 424, 430; 487 NW2d 479 (1992); *People v Cunningham*, 21 Mich App 381, 384; 175 NW2d 781 (1970); CJI2d 17.7(4).

There is no doubt that defendant assaulted the victim. Defendant admitted knowing beforehand that the victim might be armed and that it might be necessary to kill him. Toward that end, defendant armed himself with a knife and an extension cord in order to stab or strangle the victim should he attempt to defend himself. Defendant held the victim so the codefendant could beat him in the head. Defendant did not need to use his own weapons because the blows to the head put the victim down. However, defendant admitted in one statement that he kicked the victim once he was down, fracturing two ribs. Such evidence was clearly sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant harbored the requisite intent.[2]

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy

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[2] Defendant also argues that the case should be remanded for correction of the judgment of sentence. Defendant was charged in Count III with assault with intent to murder. Although the jury convicted him of the lesser included offense of assault with intent to commit great bodily harm less than murder, the judgment indicated that he'd been convicted as charged. Because the parties later stipulated to entry of an order to reflect the charge of which defendant was convicted, the issue is moot. *City of Jackson v Thompson-McCully Co, LLC*, 239 Mich App 482, 493; 608 NW2d 531 (2000).