

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALI ABBAS AL-ATAWI,

Defendant-Appellant.

UNPUBLISHED

October 28, 2004

No. 248640

Wayne Circuit Court

LC No. 02-014102-02

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of unarmed robbery, MCL 750.530, and assault with intent to do great bodily harm less than murder, MCL 750.84, for which he was sentenced to concurrent prison terms of forty months to fifteen years and forty months to ten years, respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that the evidence was insufficient to sustain the verdicts. We disagree.

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39; 642 NW2d 339 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The trial court's factual findings are reviewed for clear error. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made". *Id.*

The elements of unarmed robbery are "(1) the felonious taking of any property which may be the subject of larceny from the person or presence of the complainant, (2) by force and violence, assault or putting in fear, (3) while not armed with a dangerous weapon." *People v Spry*, 74 Mich App 584, 594; 254 NW2d 782 (1977). The force used to accomplish the taking underlying a charge of unarmed robbery must occur before or contemporaneously with the

taking. *People v Randolph*, 466 Mich 532, 536; 648 NW2d 164 (2002). Unarmed robbery is a specific intent crime. *People v Dupie*, 395 Mich 483, 487; 236 NW2d 494 (1975). It requires proof that the defendant harbored a larcenous intent, i.e., to permanently deprive the owner of his property. *People v Fordham*, 132 Mich App 70, 75; 346 NW2d 899 (1984), reversed on other grounds 419 Mich 874; 347 NW2d 702 (1984). The defendant's intent may be inferred from his conduct and from facts and circumstances established beyond a reasonable doubt. *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985).

The elements of assault with intent to do great bodily harm 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 permanently harm the health or function of the body.” CJI2d 17.7(4). Assault with intent to do great bodily harm 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).

The prosecution's witnesses testified that defendant and Karim Al-Khafaji confronted a woman outside a bar. The woman's friend, George Allen, intervened, whereupon defendant and Al-Khafaji attacked him. Defendant hit Allen in the back of the head with a hard object and he and Al-Khafaji repeatedly hit and kicked Allen, opening cuts about his head and bruising his eyes. In the course of the beating, defendant stripped Allen of his leather coat and put it in his car. Defendant also removed Allen's cell phone, which Allen never saw again. Such evidence, if believed, was sufficient to prove each element of the crimes charged beyond a reasonable doubt.

Defendant argues that the evidence was insufficient to sustain the verdicts because the testimony of the prosecution's witnesses, which was not corroborated by any disinterested persons, was too inconsistent and otherwise unbelievable to be credible. In addition, Al-Khafaji, who pleaded guilty to the robbery charge, purportedly took complete responsibility for stealing Allen's things and exonerated defendant.

Witness credibility is a matter of weight, not sufficiency of the evidence. *People v Scotts*, 80 Mich App 1, 9; 263 NW2d 272 (1977). That aside, the factfinder, be it the judge or the jury, “may choose to believe or disbelieve any witness or any evidence presented in reaching a verdict.” *People v Cummings*, 139 Mich App 286, 293-294; 362 NW2d 252 (1984). The issue of witness credibility is one for the trier of fact to determine, *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991), and this Court “will not resolve credibility issues anew on appeal.” *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002).

Further, this Court's review is limited to the record developed by the trial court. *Harkins v Dep't of Natural Resources*, 206 Mich App 317, 323; 520 NW2d 653 (1994); MCR 7.210(A)(1). Al-Khafaji did not testify at trial and the record of his plea proceeding was not offered as evidence and thus may not be considered on appeal.

We find on review de novo that the evidence presented, when viewed in a light most favorable to the prosecution, supports defendant's convictions for unarmed robbery and assault with intent to do great bodily harm less than murder.

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Richard A. Bandstra