

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DITAINIA ADAMS

Defendant-Appellant.

UNPUBLISHED
December 1, 2005

No. 257313
Monroe Circuit Court
LC No. 03-033284-FC

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of assault with intent to murder, MCL 750.83. Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to fourteen years, three months to thirty years in prison, with 266 days' credit for time served. We affirm. This case is being decided without oral argument pursuant to MCR 7.214 (E).

On appeal, defendant contends that there was insufficient evidence to support his conviction of assault with intent to murder. We disagree. In reviewing the sufficiency of evidence in a criminal case, we view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).

The elements of assault with intent to murder include: (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). The crime requires specific intent that may be proven by inference from any facts in evidence. *Id.* Furthermore, minimal circumstantial evidence of intent is sufficient. *Id.*

An aider or abettor of the crime of assault with intent to murder is guilty of the crime itself. MCL 767.39. A defendant will be guilty of aiding and abetting a crime upon proof that: (1) the substantive criminal offense was committed by the defendant or by another; (2) the defendant performed acts or gave encouragement which aided or assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time of the giving of aid or encouragement. *People v Partridge*, 211 Mich App 239, 240; 535 NW2d 251 (1995).

During trial, the prosecution presented evidence to prove that defendant participated in two attacks on James Deaton that left him severely injured. Kai Hudson testified that defendant accompanied Deaton between two homes on Almyra Avenue in Monroe, Michigan and that, subsequently, she heard noises like somebody was being hit. Following the attack, defendant and others emerged from the area where Hudson saw Deaton lying injured on the ground. Hudson also identified defendant as one of the individuals who later ran toward Deaton and attacked him in a second assault as Deaton was stumbling down Almyra. Another witness, Calvin Johnson, testified that defendant was in the area on the night of the attacks on Deaton.

Although there was contradictory testimony regarding the presence of defendant during the attacks, the jury returned a verdict of guilty on the charge of assault with intent to murder. Where testimony is conflicting, it is the jury's function to determine questions of fact, including the weight to be given to evidence presented and the credibility of each witness. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992). Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *McRunels, supra* at 181. Furthermore, because minimal circumstantial evidence is sufficient to satisfy intent, the jury had sufficient evidence here to determine that defendant had the specific intent to kill. *Id.* We conclude that, in reviewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find that defendant was guilty of assault with intent to murder beyond a reasonable doubt.

Defendant also claims that his conviction for assault with intent to murder under an aiding and abetting theory was inconsistent with his codefendant's conviction of the lesser offense of assault with intent to commit great bodily harm. One who aids and abets may be charged and convicted as a principal. MCL 767.39. Therefore, regardless of whether codefendant was convicted of a lesser offense, defendant could still be charged with and convicted of the greater offense.

Affirmed.

/s/ Michael R. Smolenski
/s/ Bill Schuette
/s/ Stephen L. Borrello