STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 23, 2007
v	No. 272781 Wayne Circuit Court
RICARDO TOLSON, a/k/a RICARDO WADE TOLSON, Defendant-Appellant.	LC No. 06-003240-01

Before: Owens, P.J., and Bandstra and Davis, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of one count of assault with intent to commit murder, MCL 750.83, two counts of assault with intent to do great bodily harm less than murder, MCL 750.84, and one count of aggravated domestic assault, MCL 750.81a(2). The trial court sentenced defendant as a second habitual offender, MCL 769.10, to 29 to 60 years' imprisonment for the assault with intent to commit murder conviction, 5 to 15 years' imprisonment for each assault with intent to do great bodily harm less than murder conviction, and one year's imprisonment for the aggravated domestic assault conviction, to be served concurrently, with 141 days' credit for time served. Defendant now appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On the morning of March 5, 2006, defendant and his girlfriend, Raquel Rivera, had an argument regarding the use of her car. After the argument, they did not interact for the rest of the day. Sometime after 12:30 a.m., as Raquel slept, defendant struck Raquel in the back of the head with a five-pound barbell. Raquel awoke up with a headache, touched the back of her head where it hurt, and felt a gash. Defendant told Raquel that she had fallen and hit her head, and that he would ask Raquel's daughter, Laishe Rivera, to take her to the hospital. Defendant then ran from the room. Raquel noticed the barbell on the floor covered in blood. She tried to find her telephone to call 911, but defendant had taken it. However, she found defendant's cellular telephone in the room and called 911.

After defendant left Raquel's bedroom, he entered the bedroom of Raquel's son, Aaron Rivera. He woke Aaron and tried to cut his neck with a knife, but the knife came apart at the handle. Aaron ran to Laishe's room and blocked the door. Defendant attempted to enter Laishe's room but when she confronted him, he left and went to another area of the house.

Laishe and Aaron went to Aaron's room, found the broken knife, and hid it. Soon thereafter, defendant returned to the hallway. Laishe tried to go upstairs to see her mother, but defendant would not let her. Then defendant went upstairs, stabbed Raquel in the neck multiple times, and returned downstairs. Defendant left the house, got into his car, and drove away. An officer near the scene saw defendant leave, followed him, and eventually stopped and arrested him.

Defendant first argues that the prosecution presented insufficient evidence to justify the trial court's finding that defendant assaulted Raquel with the intent to murder her with the five-pound barbell. We disagree. In reviewing the sufficiency of the evidence, we view the evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005).

In a criminal case, due process requires that a prosecutor introduce sufficient evidence to justify a factfinder's conclusion that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). It is for the trier of fact rather than this Court to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Intent and premeditation may be inferred from all the facts and circumstances. *People v Safiedine*, 163 Mich App 25, 29; 414 NW2d 143 (1987). Because proving an actor's state of mind is difficult, minimal circumstantial evidence is sufficient. *People v McGhee*, 268 Mich App 600, 623; 709 NW2d 595 (2005). Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

"The elements of assault with intent to commit murder are: (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Brown*, 267 Mich App 141, 147-148; 703 NW2d 230 (2005) (citations and internal quotations omitted). Raquel received between 18 and 20 staples to the back of her head. There was blood on her bed and a bloody five-pound barbell on the floor. Further, defendant attempted to prevent Raquel from calling for help by taking her telephone, and he then assaulted her son. When defendant returned to Raquel's room, he stabbed her and took his cellular telephone from her as she was again calling for help. We will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Therefore, we conclude that the prosecutor presented sufficient evidence for the trial court to find that defendant assaulted Raquel with the barbell with the intent to murder her.

Defendant asserts that the trial court's finding that Raquel was on a ventilator for two weeks was erroneous and, therefore, Raquel's injuries were not severe enough to establish that he had the intent to kill her. Although defendant claims that the length of time the trial court concluded Raquel spent in the hospital is not accurate, he does not dispute that Raquel was admitted to the intensive care unit and placed on a ventilator. Regardless, the severity, or even the existence, of injury is not an element of assault with intent to commit murder. In *People v Johnson*, 54 Mich App 303, 304; 220 NW2d 705 (1974), the Court found that the defendant committed assault with intent to commit murder when he leaned out the window of his vehicle and fired a sawed-off shotgun at an officer, even though the officer was not hit. The *Johnson*

Court concluded, "The result and purpose of such an assault is death. The unjustified and unexcused intention to kill when committing an assault constitutes the crime charged." *Id.* at 304. Therefore, intent is not mitigated by the severity of the victim's injuries.

In this case, Raquel's injuries were evidence of the assault and aided in the finding of intent. Intent is inferred from the entirety of the facts presented at trial, and "it is for the trier of fact rather than this Court to determine what inferences can be fairly drawn from the evidence. . . ." *Hardiman*, *supra* at 428. Although the trial court could use Raquel's hospitalization and condition after the incident in its analysis of intent, the existence of injury was not required to establish that defendant committed an assault with intent to commit murder.

Defendant also argues that there was insufficient evidence for the trial court to find that he was doing anything more than trying to scare Aaron when he put a knife to his throat. Again, we disagree.

"Assault with intent to commit great bodily harm less than murder requires proof of (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). The record shows that defendant tried to cut Aaron with a knife, but the knife came apart at the handle when it came in contact with him. There is no evidence in the record to show that defendant was aware of the defect and meant for the knife to come apart upon touching Aaron. Further, defendant chased Aaron when he ran from the room, wrestling him to the ground and attempting to cover his mouth. Defendant also tried to break down Laishe's door after Aaron ran into her room. "An actor's intent may be inferred from all of the facts and circumstances,… and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *People v Fetterly*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998) (citation omitted). Intent to do great bodily harm is defined as "an intent to do serious injury of an aggravated nature." *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986). There was sufficient evidence for the trial court to find that defendant was trying to do more than scare Aaron and, if not for the knife breaking, Aaron would have been injured.

Next, defendant argues that his convictions were against the great weight of the evidence. We disagree. When a party claims that the verdict rendered after a bench trial is against the great weight of the evidence, we review the trial court's factual findings for clear error. MCR 2.613(C).

A new trial may be granted on some or all the issues if a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e). Determining whether a verdict is against the great weight of the evidence requires review of the whole body of proofs. *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993), overruled in part on other grounds *People v Lemmon*, 456 Mich 625; 576 NW2d 529 (1998). The test is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003). "Regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(A).

Defendant bases his assertion of error on his claim that insufficient evidence was present to establish his convictions. He claims that because Raquel did not receive a skull fracture or closed-head injury, he did not intend to murder her. Further, defendant argues that evidence was presented that clearly contradicts the trial court's findings. Although defendant asserts there was error regarding the length of time that Raquel was in the hospital, he does not identify facts in the record that support his assertion of error. The prosecution presented enough evidence for the trial court to find that defendant intended to murder Raquel and inflict great bodily harm on Aaron. After reviewing the whole body of proofs, we find that the evidence does not preponderate so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand.

Affirmed.

/s/ Donald S. Owens
/s/ Richard A. Bandstra
/s/ Alton T. Davis