

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LANCE LINELL MCDONALD,

Defendant-Appellant.

UNPUBLISHED

August 19, 2008

No. 278602

Wayne Circuit Court

LC No. 06-012202-01

Before: Schuette, P.J., Zahra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of assault with intent to do great bodily harm less than murder, MCL 750.84. He was sentenced to five years' probation. Pursuant to the probation order, defendant was ordered to pay restitution and costs, attend anger management, and avoid contact with the victim or witnesses. We affirm.

Defendant argues on appeal that the evidence was insufficient to prove he committed assault with the intent to do great bodily harm less than murder and the trial court failed to make factual findings to support the verdict. We disagree. A Court must "review a challenge to the sufficiency of the evidence in a bench trial de novo and in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). "The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the . . . verdict. The scope of review is the same whether the evidence is direct or circumstantial. Circumstantial evidence and reasonable inference arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

"A trial court's factual findings are generally reviewed for clear error." *People v Gillam*, 479 Mich 253, 260; 734 NW2d 585 (2007); MCR 2.613(C). A finding is clearly erroneous when, after a review of the entire record, the reviewing court is "left with a definite and firm conviction that a mistake has been made." *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000).

"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. Assault with intent to commit great bodily harm is a specific intent crime.” *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997) (internal citation omitted); MCL 750.84¹. “The term ‘intent to do great bodily harm less than the crime of murder’ has been defined as intent to do serious injury of an aggravated nature.” *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986), citing *People v Ochotski*, 115 Mich 601, 608; 73 NW (1898). “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) (internal citation omitted).

Defendant argues that the evidence was insufficient to prove he possessed the specific intent required to sustain a conviction for assault with the intent to do great bodily harm less than murder. This argument has no merit. The record supports the trial court’s findings that sufficient evidence existed to support defendant’s conviction. The facts show defendant punched a 62 year old man in the back of the head causing him to skid to the ground. Defendant then stood over the victim and repeatedly punched him 15 to 17 times in the temple, ear and face causing a bloody nose, bloody mouth, broken blood vessels in the eye, and two black eyes. Further, defendant stepped back and kicked the victim in the back and side while he was on the ground. In light of this, a rational trier of fact could reasonably infer beyond a reasonable doubt a specific intent on the part of defendant to inflict “serious injury of an aggravated nature” on the victim. *Mitchell*, *supra* at 39. Although the trial court’s observations that defendant was disproportionately larger than the victim and of the large age discrepancy between defendant and Spiegel were pertinent, they are not supported in the record. However, the record supports the remaining trial court findings necessary to infer an intent to do great bodily harm less than murder.

Affirmed.

/s/ Bill Schuette
/s/ Brian K. Zahra
/s/ Donald S. Owens

¹ MCL 750.84 provides: “Any person who shall assault another with intent to do great bodily harm, less than the crime of murder, shall be guilty of a felony punishable by imprisonment in the state prison not more than 10 years, or by fine of not more than 5,000 dollars.”