

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRANCE SMITH,

Defendant-Appellant.

UNPUBLISHED

September 23, 2008

No. 278482

Wayne Circuit Court

LC No. 06-014089-01

Before: Schuette, P.J., and 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. Defendant was sentenced to serve a prison term of six years and four months to ten years. We affirm. We decide this appeal without oral argument under MCR 7.214(E).

The trial record establishes that the victim was attacked by defendant and another man while all three were housed at the Wayne County Jail. The victim was severely beaten on the head, with defendant using the hard plastic part of a mop and the other assailant using a broom, his fist and feet. The evidence presented indicated that the victim lost consciousness, suffered fractures in his neck and lower back, suffered trauma to the head, remained in the intensive care unit at the hospital for three days, and could not walk for four and a half months after the incident.

Defendant argues that there was insufficient evidence adduced below to uphold his conviction. We disagree. Sufficiency of evidence claims are reviewed de novo, viewing the evidence in the light most favorable to the prosecution in order to determine whether a rational trier of fact could conclude that the essential elements of the crime were proven beyond a reasonable doubt. *People v Odom*, 276 Mich App 407, 418; 740 NW2d 557 (2007).

The elements of assault with intent to do great bodily harm are an attempt or threat to do great bodily harm and the specific intent to do that harm. *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005). Defendant does not dispute that an attack took place or that the victim was severely injured. Rather, defendant contends that there was insufficient evidence to show that he possessed the requisite intent to commit the assault as an aider and abettor and therefore his conviction should not stand. In support, defendant argues, in part, that the victim's testimony regarding the nature of the act was not credible, leaving the trier of fact with

insufficient evidence to find intent. As a matter of law, witness credibility is an issue for the fact-finder at trial. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Indeed, this Court must make credibility choices in support of the verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). In the instant case, the court found the victim's testimony credible and we will not revisit that finding anew on appeal.

Defendant's contention that evidence of his intent to commit the offense was premised on speculation that defendant disliked complainant due to his religious activities is irrelevant. The elements of this crime do not involve motive. Moreover, the court did not reference this alleged motive at any point in its findings of fact. We also reject defendant's assertion that the court relied in error on the severity of the victim's injuries as evidence of defendant's intent. Evidence of the nature and extent of injuries is admissible to show intent. See *People v Howard*, 226 Mich App 528, 550; 575 NW2d 16 (1997).

Not only may the severity of the injuries be considered, a fact-finder can infer intent from circumstantial evidence including the act, means, or manner employed to commit the offense. *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001). The law clearly states that, when convicted as an aider and abettor, the evidence must show that the defendant either intended the commission of the crime himself or had knowledge that the principal intended its commission at the time of giving aid or encouragement. *People v Smielewski*, 235 Mich App 196, 207; 596 NW2d 636 (1999). Here, the evidence showed that the victim was severely beaten in the back of the head, that defendant employed the hard plastic part of a mop to strike the victim, and that the other assailant used a broom, his fist, and his feet to beat the victim. A section of the mop apparently broke off during the attack and was admitted as an exhibit at trial. The evidence also shows that the two acted together and that defendant continued to play a role in the attack as codefendant continued to injure the victim. The victim's testimony, photographs of his injuries while at the hospital, and his medical records all attest to the severity of the injuries inflicted. Together, this evidence clearly provides sufficient evidence that defendant himself intended to cause serious injury of an aggravated nature. "Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence" is all that is needed to support a finding that a defendant acted with a specific intent in mind. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Here, the circumstantial evidence of intent is more than minimal.

Affirmed.

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