

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD JOSEPH STEVENS,

Defendant-Appellant.

UNPUBLISHED

June 23, 2009

No. 284000

Arenac Circuit Court

LC No. 07-003302-FH

Before: Wilder, P.J., and Meter and Servitto, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to do great bodily harm less than murder (assault GBH), MCL 750.84; felonious assault, MCL 750.82; obstruction of justice, MCL 750.505; and first-degree home invasion, MCL 750.110a(2). He was sentenced as a fourth-offense habitual offender, MCL 769.12, to concurrent prison terms of 320 months to 40 years for assault GBH, home invasion, and obstruction of justice, and to 120 months to 15 years for felonious assault. Defendant appeals as of right. We affirm.

Defendant first challenges the sufficiency of the evidence for his assault GBH conviction. In essence, he argues that he was convicted of felonious assault for his use of a fan during the first assault on the victim and that the assault GBH conviction was for the second assault on the victim. Defendant asserts that the prosecutor failed to show, with regard to this second assault, that the “assault resulted in injuries of an aggravated nature or causing serious and permanent bodily injury.” We disagree that defendant is entitled to appellate relief.

Defendant conflates the elements of aggravated assault with the elements of assault GBH. MCL 750.81a(1) defines aggravated assault as an assault without a weapon that inflicts serious or aggravated injury without the intent to commit murder or to inflict great bodily harm less than murder. The elements of assault with intent to do great bodily harm less than murder 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); MCL 750.84. Contrary to defendant’s argument, the injury is not the focus of the offense of assault GBH.

The evidence was sufficient to establish that the second assault was an assault GBH. In reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the

prosecution and 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 Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). “[C]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000). Moreover, the trier of fact, not this Court, determines what inferences can be fairly drawn from the evidence and determines the weight to accord to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). “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 Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998) (citation omitted).

The testimony established that during the first assault, defendant punched, kicked, and stomped on the victim, and attacked him “a few times” with a portable fan, breaking the fan and the victim’s nose. The testimony established that during the second assault, defendant pinned the victim down and punched and kicked him. This established an attempt to violently inflict corporal harm. Moreover, the jury could infer that defendant intended to do great bodily harm by punching and kicking the victim. Such a finding is buttressed by evidence that the injuries were inflicted on someone who was already suffering significant corporal harm from the earlier beatings. Accordingly, there was sufficient evidence of an assault and the requisite intent to convict defendant of assault GBH for the second assault on the victim.

Defendant next argues that the trial court departed from the minimum sentencing guidelines range with respect to three of his sentences – for assault GBH, felonious assault, and obstruction of justice. However, the trial court was required to score only the crime having the highest crime class. *People v Mack*, 265 Mich App 122, 126-128; 695 NW2d 342 (2005).¹ Assault GBH is a class D offense and felonious assault is a class F offense. MCL 777.16d. Common-law obstruction of justice is a Class E offense, MCL 777.16x, whereas first-degree home invasion is a Class B offense. MCL 777.16f. Thus, the scoring of only the first-degree home invasion conviction was proper.

Defendant argues that the sentences for the three lesser crimes violated the principle of proportionality. This principle requires that a sentence be proportionate to the circumstances of the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The trial court noted defendant’s juvenile and adult criminal history, which it described as terrible, as well as the facts of this case and the “brutal beating” involved. The presentence investigation report notes that defendant had one misdemeanor and five felonies as a juvenile, and ten felonies

¹ We note that *Mack* was called into question in dicta in *People v Johnigan*, 265 Mich App 463, 470-472; 696 NW2d 724 (2005), and that two justices of our Supreme Court have noted that *Johnigan* raises a question regarding whether a trial court is obligated under the statutory sentencing guidelines to score all felonies or only the highest class felony. See *People v Getscher*, 478 Mich 887, 887-888; 731 NW2d 768 (2007), and *People v Smith*, 475 Mich 891-892, 716 NW2d 273 (2006). However, under MCR 7.215(J)(1), this Court is required to follow *Mack* because that decision has not been reversed or modified by the Supreme Court or a special panel of this Court.

and three misdemeanors as an adult. He had served various prison terms, most recently having been released on February 4, 2004, after serving his maximum term. Given that this was a particularly brutal assault GBH and given defendant's extensive criminal record, we conclude that the sentences for these crimes were proportionate.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Patrick M. Meter

/s/ Deborah A. Servitto