STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 9, 2010
v	No. 288532 Saginaw Circuit Court
RECO G. JONES, Defendant-Appellant.	LC No. 08-030619-FH

Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of three counts of assault on a prison employee, MCL 750.197c(1), and prisoner possession of a weapon, MCL 800.283(4). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with assault with intent to commit great bodily harm less than murder, three counts of assault on a prison employee, and prisoner in possession of a weapon stemming from his alleged assaults of prison guards Ryan Ehringer, Robert Wozniak, Jeremy Hulbert, and Terry Beard at the Saginaw Correctional Facility.[1] Ehringer, Wozniak, and Beard were injured when defendant struck them with a homemade knife while they and other officers were attempting to subdue defendant and another prisoner who were fighting in the cafeteria.

Defendant first argues that the prosecution failed to present sufficient evidence to show that he was guilty beyond a reasonable doubt of assaulting Wozniak and Beard. He contends that the evidence presented at trial demonstrated that both Wozniak and Beard were inadvertently or accidentally cut while trying to subdue him, and while he was still trying to continue his fight with the other inmate. Defendant asserts that the prosecution failed to demonstrate that defendant had the specific intent to harm Wozniak or Beard.

We review a defendant's allegations regarding insufficiency of the evidence de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). We view the evidence in

[1] Defendant was charged with assault with intent to commit great bodily harm less than murder as to Ehringer, but the jury convicted him of the lesser offense of assault on a prison employee. The jury acquitted defendant of the assault on a prison employee charge as to Hulbert.

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. *Id*. However, we should not interfere with the jury's role of determining the weight of the evidence or the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Satisfactory proof of the elements of the crime can be shown by circumstantial evidence, and the reasonable inferences arising therefrom. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). It is for the trier of fact to determine what inferences can be fairly drawn from the evidence and the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

MCL 750.197c(1) provides in relevant part, "[a] person lawfully imprisoned in a jail, other place of confinement established by law for any term, . . . who . . . through the use of violence, threats of violence or dangerous weapons, assaults an employee of the place of confinement . . . knowing the person to be an employee . . . is guilty of a felony . . . ."

> To support a conviction of assault of an employee of a place of confinement, the prosecution must prove that the defendant: (1) was lawfully imprisoned in a place of confinement; (2) used violence, threats of violence, or dangerous weapons to assault an employee of the place of confinement or other custodian; and (3) knew that the victim was an employee or custodian. [*People v Neal*, 232 Mich App 801, 802-803; 592 NW2d 92 (1998), adopted by special panel 233 Mich App 649 (1999).]

We hold that the prosecution presented sufficient evidence to support the assault convictions. Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient to establish the element of intent. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). The guards' collective testimony established that defendant, while armed with a weapon, struck Ehringer, Wozniak, and Beard, while they and other guards attempted to control him. Defendant was actively fighting the guards, even as they tried to immobilize his weapon hand. The evidence supports a reasonable finding that defendant struck at the guards deliberately and intentionally. The fact that defendant may have had a general intent, or an ultimate purpose to extricate himself from the guards so that he could continue the fight with the other inmate, does not negate the jury's ability to conclude that defendant had the specific intent to assault the guards to carry out this purpose. This is not a case where one guard accidentally intercepted a blow meant for the other inmate. The evidence was sufficient to support the assault convictions as to Wozniak and Beard.

Defendant next argues that defense counsel rendered ineffective assistance when he failed to object to the trial court's transferred intent instruction.

> "Effective assistance of counsel is presumed, and [a] defendant bears a heavy burden of proving otherwise. In order to overcome this presumption, defendant must first show that counsel's performance was deficient as measured against an objective standard of reasonableness under the circumstances and according to prevailing professional norms. Second, defendant must show that the deficiency was so prejudicial that he was deprived of a fair trial such that there is a

> reasonable probability that but for counsel's unprofessional errors the trial outcome would have been different." [*People v McGhee*, 268 Mich App 600, 625; 709 NW2d 595 (2005) (citations omitted).]

Because defendant did not move for a new trial or a *Ginther*[2] hearing before the trial court, our review of his ineffective assistance claim is limited to mistakes apparent on the record. *People v Cox*, 268 Mich App 440, 453; 709 NW2d 152 (2005); *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997).

Citing *People v Hurse*, 152 Mich App 811, 815; 394 NW2d 119 (1986), defendant maintains that this instruction was incorrect because "[i]f defendant had actually assaulted his fellow inmate, without accidentally touching the prison employee[s], he could not have been convicted of assaulting a prison employee." However, the trial court proffered this instruction in connection with the charge of assault with intent to commit great bodily harm less than murder concerning Ehringer, not in connection with the instructions concerning the lesser included offense of assault of a prison employee, or in connection with the charges based on the assaults of the other guards. This instruction was appropriate for the charge of assault with intent to commit great bodily harm less than murder. See e.g., *People v Plummer*, 229 Mich App 293, 304 n 2; 581 NW2d 753 (1998); *People v Lawton*, 196 Mich App 341, 350-351; 492 NW2d 810 (1992). Therefore, defendant cannot show that counsel provided ineffective assistance by affirmatively agreeing to the jury instructions here. See *People v Mack*, 265 Mich App 122, 130; 695 NW2d 342 (2005).

Affirmed.

/s/ Jane M. Beckering
/s/ Jane E. Markey
/s/ Stephen L. Borrello

[2] *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).