STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee	UNPUBLISHED May 24, 2012
v	No. 302407 Wayne Circuit Court
HERMAN EUGENE MONTGOMERY, Defendant-Appellant.	LC No. 10-009669-FH

Before: SERVITTO, P.J., and CAVANAGH and FORT HOOD, 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 as a fourth habitual offender, MCL 769.12, to 67 months to 20 years in prison. Because there was sufficient evidence to support defendant's conviction, we affirm.

This case arises out of an assault that took place on July 4, 2010, in which defendant attacked and injured his estranged wife's boyfriend. The boyfriend resided with defendant's estranged wife and their minor children. Defendant went into the home without permission, locating the boyfriend in a bedroom. Defendant struck the victim from behind with a large beer bottle, striking him in the left eye and, when the victim turned around, struck him again with the bottle in the jaw. The victim suffered a broken jaw and lost the sight in his left eye.

On appeal, defendant contends that the evidence presented at trial was insufficient to convict him of assault with intent to commit great bodily harm. We disagree.

This Court reviews de novo a challenge to the sufficiency of the evidence in a bench trial. *People v Lanzo Const Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). When deciding a claim of insufficient evidence, an appellate court "'must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.'" *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000), quoting *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended in part 441 Mich 1201 (1992). "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." *Nowack*, 462 Mich at 400.

Assault with intent to do great bodily harm less than murder requires proof of two elements: "(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). "'Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.'" *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (quoting *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993)). However, given the difficulty of proving state of mind, only minimal circumstantial evidence is sufficient to prove that an actor had the requisite intent, *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985), which can be also be inferred by the manner in which defendant acted, the method he used to carry out the act, and from the surrounding facts and circumstances. See, e.g., *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001). "Even in a case relying on circumstantial evidence, the prosecution need not negate every reasonable theory consistent with the defendant's innocence, but merely introduce evidence sufficient to convince a reasonable [fact-finder] in the face of whatever contradictory evidence the defendant may provide." *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995).

Viewed in a light most favorable to the prosecution, a rational trier of fact could have found that the prosecution proved all the essential elements of assault with intent to do great bodily harm beyond a reasonable doubt. The prosecution witnesses testified that defendant entered the victim's home unannounced and uninvited. The victim's back was toward defendant when defendant entered the bedroom and struck the victim in the left eye from behind with a 40 ounce beer bottle. Blood immediately spurted from the eye. When the victim spun around, defendant struck him in the right jaw with the bottle, fracturing the bone. The assault ended only after defendant's brother urged him to stop and leave the home. There is no indication that the victim was armed. Given defendant's conduct inside the home, his use of a full or partially full beer bottle to approach the unarmed victim from behind and then strike the victim in the face twice, and the other surrounding facts and circumstances, a rational trier of fact could reasonably infer that defendant intended to cause the victim great bodily harm.

Defendant also asserts that he struck the victim in self-defense and that the prosecution failed to disprove his claim of self-defense. According to defendant, the failure resulted in insufficient evidence to convict him. Again, we disagree.

Once a defendant introduces evidence of self-defense, the prosecutor bears the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. *People v James*, 267 Mich App 675, 677; 705 NW2d 724 (2005). A claim of self-defense requires proof that defendant has acted in response to an assault. *Detroit v Smith*, 235 Mich App 235, 238; 597 NW2d 247 (1999).

Here, defendant attempted to portray the victim as the initial aggressor in this incident. Defendant's testimony regarding his motive for making a visit to the home is in sharp contrast to the other witnesses' testimony. The prosecution's witnesses disputed defendant's version of events and testified that defendant may have come to the home in response to a dispute that occurred between defendant's daughter and the victim the day before the assault. The evidence supported a reasonable inference that defendant's assault was precipitated by his anger over the argument, not by any actions initiated by the victim. The trial court clearly found the testimony

of defendant to be unbelievable and the testimony of the prosecution's witnesses to be credible. This Court will not interfere with the fact-finder's role of determining the weight of the evidence or the credibility of witnesses. *Wolfe*, 440 Mich at 514-515.

Defendant's argument that the prosecution did not rebut his claim of self-defense because, among other things, the prosecutor did not cross-examine defendant lacks merit. The prosecutor need not negate every reasonable theory consistent with the defendant's innocence. It was sufficient that the prosecution introduced evidence to convince a reasonable fact-finder of defendant's guilt in the face of whatever contradictory evidence defendant provided. *Konrad*, 449 Mich at 273. There was ample evidence to convince a trier of fact that the prosecution met its burden of disproving that defendant acted in self-defense.

Affirmed.

/s/ Deborah A. Servitto
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood