

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 22, 2011

v

VINCENT LAMONT WIGGINS,

Defendant-Appellant.

No. 300583
Berrien Circuit Court
LC No. 2010-001237-FC

Before: HOEKSTRA, P.J., and K.F. KELLY and BECKERING, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for assault with intent to do great bodily harm, MCL 750.84, extortion, MCL 750.213, and unlawful imprisonment, MCL 750.349b. Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent sentences of 120 to 480 months for each offense. We affirm.

I. BASIC FACTS

Defendant's convictions arise out of events transpiring from the afternoon of Saturday, March 6, 2010 to the afternoon of Sunday March 7, 2010. Defendant, along with Victor Sawyer and Loren Robinson, assaulted and held captive Joshua Karmalegos in a dispute over money Karmalegos owed Robinson for crack cocaine. The three men then extorted \$1,000 from Karmalegos's father by threatening to harm Karmalegos if the money was not paid.

Although Karmalegos owed the money to Robinson, Karmalegos testified that all three men "just seemed to collaborate" about it, as if it "was all of their money, like they were doing it as a group kind of thing." Once the demand for the money was made, Karmalegos "wasn't allowed to leave anywhere out of their sight." At one point, Robinson was sitting on a couch in front of the door and "[b]oth doorways were blocked off;" Karmalegos was "kind of sitting on a dresser in the corner of the room" and was "kind of being kept right there."

Karmalegos started to "get upset because [he] was scared for his life." Karmalegos was "cursing" and "was saying, [they] need[ed] to let [him] go, this isn't right and that's when [he] got hit." Defendant put on some gloves and struck Karmalegos with such force that he actually blacked out after each blow. Karmalegos was previously in an automobile accident and suffered a closed head injury. He believed that if he suffered "too hard of a contact to [his] head [he could] have a seizure and ultimately die." He told defendant this and said "you guys got to

stop”; [he] was screaming, frantic . . . talking about [his] head injury” and telling them that he “can’t get hit too hard. And [defendant] said something about, well, [‘]does it look like we care? [‘]”

Robinson and defendant began talking about Karmalegos getting a hold of somebody who could pay his debt. The men wanted their money and Karmalegos believed that he “wouldn’t be leaving Benton Harbor” unless they got it and that they would continue to “beat [him] up,” “or worse.” At one point, Karmalegos was taken to a vacant house and put “in the back room.” Karmalegos stated that they were not at the vacant house long, “maybe an hour,” or less; they were waiting for Karmalegos’s father to call Robinson. At the second house, Karmalegos was “trying to make [his father] understand” during the telephone calls that “this [was] a serious thing. These people aren’t joking around. Something bad will happen to [Karmalegos] if they don’t get the money.” Robinson held the telephone, which was on “speaker,” during the calls to Karmalegos’s father; defendant and Sawyer were also in the vicinity. Eventually the men met Karmalegos’s father at an apartment complex where the \$1,000 was given by Karmalegos’s father and Karmalegos was released. When police arrived, they discovered a rock of crack cocaine in Karmalegos’s pocket. Robinson had given him the rock “for all [his] hardships and what [they] put [him] through kind of thing.”

Defendant’s version of events was substantially different. Defendant told police that he met Karmalegos at party where everyone was smoking crack cocaine, and that the two men got into a fistfight, after which “they apologized to each other, they made up and they ended up smoking more crack later on together.” Defendant denied, however, having any other involvement with Karmalegos or with what may have happened to him thereafter. He now appeals as of right.

II. SUFFICIENCY OF THE EVIDENCE

Defendant first argues that there was insufficient evidence presented to support a conviction for assault with intent to do great bodily harm. Specifically, defendant argues that the evidence showed a mere fist-fight and that there was no evidence that defendant intended to cause injury. We disagree.

When reviewing a challenge to the sufficiency of the evidence, this Court must view the evidence de novo in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010). When so doing, this Court will not interfere with the fact-finder’s exclusive role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007). Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999); *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). And, it is for the trier of fact, rather than this Court, to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to 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. *Kanaan*, 278 Mich App at 619.

The elements of assault with intent to do great bodily harm, which is a specific intent crime, are: (1) an attempt or threat with force or violence to do corporal harm to another; and (2) an intent to do great bodily harm less than murder. MCL 750.84; *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005); *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). “This Court has defined the intent to do great bodily harm as ‘an intent to do serious injury of an aggravated nature.’” *Brown*, 267 Mich App at 147, citing *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986). A defendant’s intent to do great bodily harm may be inferred from the facts and circumstances of a defendant’s conduct in committing the offense, including the means employed to perpetrate the assault and the manner of the assault. *People v Lugo*, 214 Mich App 699, 709-710; 542 NW2d 921 (1995); *People v Leach*, 114 Mich App 732, 735; 319 NW2d 652 (1982). Moreover, because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence of intent is sufficient. *Kanaan*, 278 Mich App at 622.

Karmalegos testified that defendant put on gloves before punching him in the face and head multiple times, permitting the reasonable inference that defendant intended to strike the victim with sufficient force to cause injury. Defendant continued to punch Karmalegos in the face and head to the point of unconsciousness, after being told that doing so could cause Karmalegos, who had previously suffered a closed head injury in an automobile accident, to experience “a seizure and ultimately die,” and after disavowing any concern about any such risk. We find that this constitutes sufficient evidence to give rise to an inference of the necessary intent to support the conviction. *People v Pena*, 224 Mich App 650, 659-660; 569 NW2d 871 (1997), mod in part on other grounds 457 Mich 885 (1998) (multiple kicks and blows to victim’s face, head, arms and body were sufficient, even in the absence of serious injury, to support finding of intent to do great bodily harm). See also *People v Miller*, 91 Mich 639, 643; 52 NW 65 (1892) (kicking and punching the victim in the abdomen while threatening to “kick his . . . liver out” was sufficient to permit a finding that the defendant intended to inflict great bodily harm on the victim).

Further, Karmalegos’s treating physician testified that his injuries were consistent with being struck multiple times in the face and head with a fist to the point of unconsciousness, that Karmalegos suffered a concussion as a result of these multiple blows, and that “a range of injuries” can result from punching someone in the head to the point of concussion, which have the potential for “some permanent . . . damage or sequela.” That Karmalegos’s injuries did not turn out to be permanent or serious does not negate the inferences that could reasonably be drawn from other evidence of defendant’s intent, especially considering that defendant was advised that repeatedly striking the victim in the head could result in serious and permanent injury or death. *Pena*, 224 Mich App at 660. Bearing in mind that “minimal circumstantial evidence will suffice to establish the defendant’s state of mind,” *Kanaan*, 278 Mich App at 622, we conclude that there was sufficient evidence presented from which the jury could infer that defendant intended to inflict “serious injury of an aggravated nature” on the victim.

III. OFFENSE VARIABLE 7

Defendant next argues that the trial court abused its discretion by scoring offense variable (OV) 7, MCL 777.37(1), at 50 points for his extortion and unlawful imprisonment convictions. We disagree.

“A sentencing court has discretion in determining the number of points to be scored [when calculating the sentencing guidelines], provided that evidence of record adequately supports a particular score.” *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). Accordingly, this Court reviews a trial court’s scoring decision under the sentencing guidelines “to determine whether the trial court properly exercised its discretion and whether the record evidence adequately supports a particular score.” *People v Steele*, 283 Mich App 472, 490; 769 NW2d 256 (2009), quoting *People v Wilson*, 265 Mich App 386, 397; 695 NW2d 351 (2005) (citation omitted). This Court will uphold a trial court’s scoring decision if there is any evidence to support it. *Steele*, 283 Mich App at 490.

OV 7 addresses aggravated physical abuse. It is to be scored at 50 points if “[a] victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense.” MCL 777.37(1)(a). The trial court scored OV 7 at 50 for defendant’s extortion and unlawful imprisonment convictions, finding that defendant acted in a manner “designed to substantially increase the fear and anxiety of the victim during the offense.”

In *Hornsby*, 251 Mich App at 468-469, this Court upheld the scoring of OV 7 at 50 points based on the defendant’s conduct in pulling out a gun, cocking the gun and threatening to kill the clerk and everyone in the store during an armed robbery. This Court explained that “[d]efendant did more than simply produce a weapon and demand money” as needed to complete the offense of armed robbery, and that his “actions in cocking the weapon and repeatedly threatening the life of the shift supervisor and the other employees supported the court’s finding that he deliberately engaged in “conduct designed to substantially increase the fear and anxiety a victim suffers during the offense.” *Id.* at 469.

Here, defendant’s conduct in assaulting Karmalegos, while Karmalegos was being held captive pending payment of a drug debt, was designed to convey to Karmalegos that the situation was “serious,” and to reinforce that he was not going to be able to leave until that debt was paid. Especially considering Karmalegos’s pronouncements to defendant that his being struck in the head repeatedly could cause him to suffer a seizure or could result in his death, defendant’s repeated blows to Karmalegos’s head were intended to increase his fear and anxiety, presumably to heighten the victim’s efforts to obtain the money demanded by defendant and his cohorts. Defendant also placed gloves on his hands before striking Karmalegos, an effort meant to clearly intimidate Karmalegos further. Punching the victim in the face and head to the point of unconsciousness was not necessary to complete the offenses of extortion or unlawful imprisonment. Accordingly, the evidence adequately supports a finding that defendant acted in a manner “designed to substantially increase the fear and anxiety of the victim during the offense.” Thus, the trial court properly exercised its discretion to score OV 7 at 50 points.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering