

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DJON STEVEN WILLIAMS,
Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

UNPUBLISHED
January 19, 2012

v

DJON STEVEN WILLIAMS,

Respondent-Appellant.

No. 301286
Wayne Circuit Court
Family Division
LC No. 10-494967-DL

Before: GLEICHER, P.J., and CAVANAGH and O'CONNELL, JJ.

PER CURIAM.

Respondent was adjudicated responsible for assault with intent to do great bodily harm, MCL 750.84, and assault with intent to murder, MCL 750.83.¹ He appeals as of right, challenging the sufficiency of the evidence with regard to both convictions. We reverse in part and affirm in part.

I. STANDARD OF REVIEW

When reviewing 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 the essential elements of the crime were proven beyond a reasonable doubt. *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010); *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006). However, we will not interfere with the fact-finder's exclusive role in determining the weight of the evidence or the credibility of witnesses. *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007). Circumstantial evidence and the reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

¹ Respondent was fourteen years old at the time of the incident giving rise to this action.

II. ASSAULT WITH INTENT TO DO GREAT BODILY HARM

Respondent argues that the evidence was insufficient for a rational trier of fact to find (1) that he had the requisite intent to commit this offense and (2) that the injuries suffered by Devyon Cavill actually constituted great bodily harm.

Assault with intent to do great bodily harm is a specific intent crime. The elements of the crime that must be established 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). “It is the intent with which the injury is inflicted that aggravates the assault, and brings it within the statutory definition of an assault with intent to do great bodily harm. It must be an intent to do a serious injury, of an aggravated nature.” *People v Howard*, 179 Mich 478, 488; 146 NW 315 (1914), quoting *People v Troy*, 96 Mich 530, 536-537; 56 NW 102 (1893). A respondent’s specific intent may be inferred from the facts and circumstances, including a respondent’s conduct and actions, as well as the means and manner in which the assault was committed. *Parcha*, 227 Mich App at 239; *People v Lugo*, 214 Mich App 699, 709-710; 542 NW2d 921 (1995). And 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.

Here, the evidence included that several teenagers were at a house party when words were exchanged between two boys, from two different groups of boys, possibly because respondent’s friend, Shawn, “bumped” Cavill’s friend, Alvin. After everyone was told to leave the house, Shawn and Alvin continued to exchange words outside like: “You want to fight?” The several friends of each opposing boy gathered, including respondent and Cavill. Eventually the matter escalated when Shawn and Alvin began fighting. Several of the bystander boys also began fighting. At some point, according to Cavill, Shawn hit Cavill in the face. And, Cavill testified, Shawn kept “trying to swing at me, then that’s when I was trying to fight - - fight him.” At that point respondent and another boy came over and hit Cavill in the face—but respondent only hit Cavill one time in his face and he used a closed fist. Cavill testified that the other boy, a dark-skinned boy, “just keep on hitting me. . . . in my face, and I was fighting him” Cavill’s injuries included a broken wrist, a broken maxillary sinus bone, and a broken nose.

Even viewing the evidence in the light most favorable to the prosecution, we cannot conclude that respondent assaulted Cavill with the intent to inflict great bodily harm. Both respondent and Cavill were involved in this altercation from its beginning and then both actively participated in the physical brawl that ensued. Cavill testified that he was struck several times in the face by two boys, and he fought back. Cavill also consistently testified that respondent only hit him one time during this entire episode. There were no facts or circumstances that would lead a reasonable fact-finder to conclude that respondent specifically intended to cause Cavill great bodily harm less than murder. That is, although respondent’s action may have been reckless, we cannot conclude that he possessed “an intent to do a serious injury, of an aggravated nature.” See *Howard*, 179 Mich at 488, quoting *Troy*, 96 Mich at 536-537; see, also, *People v Gould*, 225 Mich App 79, 85; 570 NW2d 140 (1997). We respectfully disagree with the dissent’s apparent conclusion that respondent’s single punch to Cavill’s face during this chaotic melee involving several fighting teenagers—including Cavill—demonstrates either the requisite specific intent or that respondent was the likely cause of Cavill’s injuries. Accordingly, we

reverse the trial court's conclusion that respondent was guilty of assault with intent to commit great bodily injury.

III. ASSAULT WITH INTENT TO MURDER

Respondent also argues that the evidence was insufficient for a rational trier of fact to find (1) that he had the requisite specific intent to kill Jeremiah McQueen and (2) that, if a killing had occurred, no mitigating circumstances existed which would reduce the charge to manslaughter.

The elements of this crime that must be established are: "(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005); *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). This is a specific intent crime, requiring an actual intent to kill under circumstances that did not justify, excuse, or mitigate the crime. *People v Taylor*, 422 Mich 554, 567; 375 NW2d 1 (1985); *People v Lipps*, 167 Mich App 99, 105-106; 421 NW2d 586 (1988). The intent to kill may be inferred from the nature of a respondent's acts constituting the assault, his conduct, temper and/or disposition at the time of, during and after the assault, the means and manner in which the assault was committed, as well as all other circumstances that may illustrate the intention with which the assault was made. See *Brown*, 267 Mich App at 149 n 5, quoting *Taylor*, 422 Mich at 568. Because of the difficulty in proving an actor's state of mind, minimal circumstantial evidence is sufficient to support a finding of intent. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

Here, McQueen testified that he was at the location of the party, but was sitting in a car for "pretty much all the time" because his leg, which had been broken, was hurting. When he saw everyone coming outside of the house, he got out of the car to gather up his friends to leave. While McQueen and his friends were walking to the car, he heard words exchanged between someone else and his friend Alvin. As McQueen continued walking back to the car, he was hit from behind on the back of the head by a fist. He blacked out or lost consciousness at that point and had no recall of what happened next. He woke up in a hospital three days later with a broken jaw, fractured nose, skull fracture, and facial injuries.

Although McQueen could not testify as to who struck him or what happened after he was initially struck, other witness testimony provided the details. First, Cavill testified that Shawn was the person who initially struck McQueen causing him to fall to the ground. Then respondent ran over to McQueen and kicked him directly in the face while he lay on the ground not moving. After he kicked McQueen, respondent then began stomping on McQueen's head several times. Cavill saw other boys kicking McQueen as well. Second, Shawn's sister testified that McQueen was walking toward the car and, when he turned around to see if his friends were following, her brother hit him in the face above the temple, knocking McQueen unconscious. When McQueen fell in the street, three other boys "stomped him," including respondent. She saw respondent stomp McQueen three times about his head while he lay unmoving on the ground. Third, Detective Sergeant Ted Stager testified that respondent admitted to him in a videotaped interview that he "kicked Mr. McQueen eight times, in the face and the neck." Other witnesses also testified that they saw respondent kick McQueen in the head area several times and that McQueen was not moving while he lay on the ground.

Viewing the evidence in the light most favorable to the prosecution, we conclude that respondent assaulted McQueen, intending to kill him under circumstances that did not justify, excuse, or mitigate this crime. There is no evidence that McQueen was involved in this altercation. All of the evidence indicates that he was, in fact, retreating from the situation, walking away from it and to a car when he was struck by Shawn and rendered incapacitated. Although he lay motionless on the street, respondent proceeded to kick him in the head, neck, and face areas and then stomp on his head repeatedly, as he admitted, causing serious and significant injuries to McQueen. If McQueen had died, a murder charge would not have been reduced to manslaughter because, for example, respondent's kicking and stomping of McQueen in his head and neck areas was unprovoked and not the result of passion. Accordingly, the trial court's conclusion that respondent was guilty of assault with intent to murder is affirmed.

Reversed in part, affirmed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher

/s/ Mark J. Cavanagh

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O'CONNELL, J. (*concurring in part and dissenting in part*).

Respondent punched a victim in the face, and the victim suffered a broken maxillary sinus bone, a fractured nose, and significant facial bruising. The majority concludes that the trial court erred in determining that this evidence was sufficient to find respondent responsible for assault with intent to do great bodily harm, MCL 750.84. I disagree. Viewing the evidence in the light most favorable to the prosecution (as we must), I would defer to the trial court's assessment of the weight of the evidence and the credibility of the witnesses and would affirm the adjudication of responsibility for both offenses. See *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997) (this court must view the evidence in the light most favorable to prosecution).

Accordingly, I dissent from the majority's reversal of respondent's adjudication of responsibility for assault with intent to do great bodily harm. I concur with the majority's decision to affirm respondent's adjudication of responsibility for assault with intent to murder, MCL 750.83.

/s/ Peter D. O'Connell