

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE HOWARD HANNER,

Defendant-Appellant.

UNPUBLISHED

July 30, 1996

No. 184164

LC No. 94-007715

Before: Young, P.J., and Holbrook, Jr., and J. Richard Ernst,* JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of assault with intent to commit great bodily harm, less than murder, MCL 750.84; MSA 28.279. He subsequently pleaded guilty of being an habitual offender, third offense, MCL 769.11; MSA 28.1083, and was sentenced to serve an enhanced prison term of five to twenty years. He appeals as of right and we affirm.

Defendant argues that insufficient evidence was presented to establish his guilt because he lacked the specific intent to commit great bodily harm. We find no merit to this argument. The testimony of the witnesses indicated that defendant aided and abetted Timothy Lytle in the violent assault of the victim and that defendant struck the victim with a cane and also kicked him several times about the face and head. Although there was some testimony that defendant had been drinking that evening, there was no evidence that he was intoxicated such that he was unable to form the intent to commit the assault. *People v Mills*, 450 Mich 61, 82-83; 537 NW2d 909 (1995); *People v Lakeman*, 135 Mich App 235; 353 NW2d 493 (1984). Accordingly, viewing the evidence in a light most favorable to the prosecution, we conclude that sufficient evidence was presented to permit a rational trier of fact (in this case, the trial judge) to find beyond a reasonable doubt that all the elements of the crime were proven. *People v Petrella*, 424 Mich 221; 380 NW2d 11 (1985).

Next, we find that defendant's five- to twenty-year sentence, which was enhanced as a result of his habitual offender conviction, was proportionate to the circumstances of this offender and this offense.

* Circuit judge, sitting on the Court of Appeals by assignment.

People v Cervantes, 448 Mich 620; 532 NW2d 831 (1995); *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ Robert E. Young, Jr.

/s/ Donald E. Holbrook, Jr.

/s/ J. Richard Ernst