

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL BROWN,

Defendant-Appellant.

UNPUBLISHED

September 14, 2006

No. 261321

Kent Circuit Court

LC No. 04-002416-FH

Before: Sawyer, P.J., and Fitzgerald and O’Connell, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to commit great bodily harm less than murder, MCL 750.84. Defendant’s conviction stems from a brutal assault on Derrick Jones. Defendant appeals as of right, and we affirm.

On appeal, defendant argues that his conviction was not supported by sufficient evidence and that it was against the great weight of the evidence presented at trial. Specifically, defendant asserts that Jones was not a credible witness because he was a cocaine addict who smoked 20 to 30 rocks of cocaine per day. Further, defendant asserts that, at most, the evidence supports a conviction for felonious assault. We disagree. We review de novo a defendant’s challenge to the sufficiency of evidence presented at a bench trial. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). We will not grant a new trial on a claim that the verdict is against the great weight of the evidence unless the evidence overwhelmingly preponderates against the verdict “so that it would be a miscarriage of justice to allow the verdict to stand.” *People v Gadowski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). In reviewing whether a conviction is supported by sufficient evidence or whether a conviction is against the great weight of the evidence, we view the evidence in a light most favorable to the prosecution and will not interfere with the factfinder’s determination of the witnesses’ credibility. *Id.*; *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005).

Jones testified that defendant and a codefendant, D’Andre Griffin, brutally assaulted him, leaving him a quadriplegic. Jones testified that Griffin punched him first because Griffin thought Jones had stolen three rocks of crack cocaine from him, but when Jones turned to defend himself, defendant approached him from behind and hit him with a large brick or similar chunk of pavement. Jones’s head hit a car window, shattering it. The brick lacerated Jones’s head, disoriented him, and caused him to fall on the curb. The two assailants immediately jumped on top of him and began stomping on him. Defendant and Griffin were wearing thick-soled boots,

and they stomped on him for five to six minutes. They stomped at least fifty times, stomping his shoulders, arms, stomach, chest, and head. They would repeatedly and alternately stomp in the same spot before moving on to another area of his body.

Jones was steadfast in his identification of defendant as one of the perpetrators, and the trial court found this testimony “compelling,” despite the codefendants’ contradictory testimony and their general attempts to disparage Jones’s recollection. Although the trial court did not find Jones’s testimony credible enough to determine, beyond a reasonable doubt, that defendant was the one to hit Jones with the brick, the trial court expressed confidence in Jones’s identification of defendant as one of the men who stomped on him. In fact, the codefendants did not dispute the fact that Jones was assaulted or the general manner in which he was assaulted, they merely named a third party as the primary assailant. We will not interfere with the trial court’s credibility determination. *Williams, supra; Gadowski, supra*. Furthermore, the stomping episode Jones described strongly indicated defendant’s attempt to inflict serious bodily injury on Jones. A defendant’s intent to commit great bodily harm can be inferred from the defendant’s acts, the means employed, and their foreseeable results. See *People v Cunningham*, 21 Mich App 381, 384; 175 NW2d 781 (1970). Under the circumstances, the trial court correctly found beyond a reasonable doubt that defendant intended to cause Jones great bodily harm.

Regarding the weight of the evidence, Jones’s testimony did not contradict immutable laws of physics, or appear patently incredible in light of other testimony. See *People v Lemmon*, 456 Mich 625, 644-646; 576 NW2d 129 (1998). In fact, most of Jones’s testimony was confirmed by the codefendants and other witnesses. Accordingly, defendant fails to persuade us that the evidence was insufficient or that his conviction ran contrary to the evidence’s great weight.

Defendant also argues that the trial court should have granted him a new trial because his waiver of a jury trial was not knowingly made. Defendant argues that he did not know that the trial court judge had a quadriplegic son when he waived his right to a jury. We disagree that this fact had any bearing on the legal quantum of knowledge necessary for defendant to knowingly waive his right to a jury. We review a trial court’s decision to deny a motion for a new trial for an abuse of discretion. *People v Cress*, 468 Mich 678, 691; 664 NW2d 174 (2003). “An abuse of discretion is found only where an unprejudiced person, considering the facts upon which the court acted, would say there was no justification or excuse for the ruling.” *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997). A court rule, MCR 6.402, provides the procedure that a trial court must follow to properly secure a defendant’s waiver of his right to a jury trial. The trial court complied with MCR 6.402 in this case. Defendant has provided us with no authority to support the proposition that, for his jury trial to have been knowingly waived, the trial judge was first required to disclose that he had a quadriplegic son. A defendant who waives the right to a jury also waives the right to voir dire the factfinder. Compare MCR 6.403 with MCR 6.412(C). Instead, another court rule, MCR 2.003(B)(1), provides for disqualification of a judge if he or she is “personally biased or prejudiced for or against a party.” However, to prevail under this rule, a defendant must demonstrate actual bias. *Cain v Dep’t of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996). Here, defendant admitted that he was not claiming that the trial court was actually biased against him. In fact, the trial court found in defendant’s favor on several factual issues, acquitting him of felonious assault and assault with intent to murder. Accordingly, when the trial court judge had no duty to disclose his personal situation and was

not biased against defendant, the trial court did not abuse its discretion in denying defendant's motion for a new trial.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell