

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
October 23, 2012

v

NICHOLAS IKE KING,

Defendant-Appellant.

No. 306132
Calhoun Circuit Court
LC No. 2011-000539-FC

Before: RONAYNE KRAUSE, P.J., and BORRELLO and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his convictions for two counts of assault with intent to do great bodily harm less than murder, MCL 750.84, two counts of torture, MCL 750.85, and two counts of unlawful imprisonment, MCL 750.349b. We affirm.

Defendant's convictions arise out of the beating and kidnapping of Dontae Shuford and Deqwan Guest. Guest testified that one of defendant's accomplices kidnapped him at gunpoint and brought him to a house in Battle Creek. Once inside the house, defendant and three of his accomplices began beating and kicking Guest; additionally, defendant struck Guest in the back of the head with an object that Guest thought was a baseball bat. After assaulting Guest, defendant and his accomplices bound Guest's hands and feet and tied him to a pole in the basement of the home. Inside the basement, Guest saw that Shuford was already badly beaten and tied to a pole in a similar fashion as Guest was. Guest testified that defendant and his accomplices were upset with him and Shuford because they, along with two other men, had been accused of breaking into a home that belonged to the sister of one of defendant's accomplices. After confining Guest and Shuford in the home for several hours, defendant and his accomplices brought Shuford and Guest to a remote country field. Defendant and his accomplices left Shuford and Guest bound and gagged, with trash bags covering their heads.

Guest testified that he identified his attackers because he was familiar with them. He identified their faces as well as their voices. Shuford, meanwhile, testified that he could not identify his attackers; he testified that his attackers wore masks. Shuford was familiar with defendant and defendant's accomplices and testified that he did not recognize defendant's voice among the persons who attacked him.

Defendant was convicted of two counts of assault with intent to do great bodily harm less than murder, two counts of torture, and two counts of unlawful imprisonment. The trial court

instructed the jury that one count for each of the offenses pertained to offenses allegedly committed against Guest, and that the other counts were offenses allegedly committed against Shuford. The trial court also instructed the jury that it could either find defendant guilty as a principal or under an aiding and abetting theory.

Defendant contends that the evidence produced at trial was insufficient for a rational jury to find that he committed the offenses that pertained to Shuford. We do not agree. We review de novo an appeal based on the sufficiency of the evidence. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). While the articulated standard of review is de novo, appellate review of a claim for sufficiency of the evidence is deferential to the trial court. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). This Court “examine[s] the evidence in a light most favorable to the prosecution, resolving all evidentiary conflicts in its favor, and determine[s] whether a rational trier of fact could have found that the essential elements of the crime were proved beyond reasonable doubt.” *Ericksen*, 288 Mich App at 196. Additionally, a reviewing court must defer to credibility determinations drawn by the finder of fact at trial, and “draw all reasonable inferences and make credibility choices in support of the jury verdict.” *Nowack*, 462 Mich at 400.

Defendant first alleges that there was insufficient evidence to support his conviction for assault with intent to do great bodily harm less than murder as to Shuford. “The elements of assault with intent to do great bodily harm less than murder 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 Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005) (quotation and emphasis omitted). “This Court has defined the intent to do great bodily harm as an intent to do serious injury of an aggravated nature.” *Id.* (quotation omitted). A jury may infer a defendant’s intent based on his actions and the circumstances in the case. *People v Lugo*, 214 Mich App 699, 709-710; 542 NW2d 921 (1995).

We find that there was sufficient evidence to establish that defendant committed the offense. As to the elements of the offense, Guest testified that Shuford’s face was “brutally beaten” and that one of his eyes was completely swollen shut, which is sufficient evidence of the assault element. Moreover, given the severity of Shuford’s facial injuries, a rational jury could infer that defendant intended to commit great bodily harm. See *Lugo*, 214 Mich App at 709-710. See also *People v Pena*, 224 Mich App 650, 659-660; 569 NW2d 871 (1997), mod in part on other grounds 457 Mich 885 (1998) (the severity of the victim’s injuries can provide sufficient evidence from which a rational jury can find the defendant intended to do great bodily harm).

There was also sufficient evidence for a rational jury to find that defendant committed, or aided and abetted in committing the offense. Here, Guest and Shuford were brought to the same house and were beaten and bound in a similar fashion. Defendant had the same motivation for attacking Shuford as he did for attacking Guest, i.e., retaliation for an alleged burglary. Moreover, defendant indicated his complicity in the attack and confinement of Shuford by indicating to Shuford that “we gonna let you go.” This statement was made while defendant was threatening death for Guest. Given the similarity of the attacks on Shuford and Guest, defendant’s motivation, and Guest’s testimony that defendant participated in assaulting him and made a statement indicating his involvement with Shuford, a rational jury could infer that that defendant participated in assaulting Shuford. See *People v Carines*, 460 Mich 750, 757; 597

NW2d 130 (1999) (circumstantial evidence and reasonable inferences arising therefrom can establish the offense). Furthermore, even though the extent of defendant's participation was unknown, the evidence was sufficient for a rational jury to find defendant guilty of the offense on an aiding and abetting theory. A person who aids or abets the commission of a crime may be convicted and punished as if he directly committed the offense. MCL 767.39. "Aiding and abetting" describes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds that might support, encourage, or incite the commission of a crime . . ." *Carines*, 460 Mich at 757 (quotation omitted, alteration in *Carines*). Even assuming that defendant himself did not assault Shuford, there was sufficient evidence from which a rational jury could infer that defendant assisted his accomplices in assaulting Shuford. Indeed, the evidence supported that Shuford was assaulted in the same house, in the same manner, and for the same reason as Guest was assaulted. Given that defendant was actively involved in assaulting Guest, it was reasonable for a jury to infer that defendant, at a minimum, rendered assistance in assaulting Shuford. See *Nowack*, 462 Mich at 400 (a reviewing court "draw[s] all reasonable inferences . . . in support of the jury verdict."); *Carines*, 460 Mich at 757.

Defendant disagrees and notes that Guest testified that defendant arrived at the house after Guest and that Shuford was at the house before Guest arrived. Defendant concludes that because Guest testified that defendant arrived after Guest, and that Shuford was beaten before Guest arrived, a rational jury could not find that defendant participated in beating Shuford. We do not agree. Guest did not testify, nor was there any other evidence, that defendant was not present at the house before Guest arrived. Moreover, given the similarities in which defendant and Guest were beaten and bound, defendant's motivation for attacking both victims, and defendant's involvement in assaulting Guest, it was reasonable for a jury to infer that defendant participated in the crimes against Shuford. See *Nowack*, 462 Mich at 400; *Carines*, 460 Mich at 757.

Defendant next contends that the evidence was insufficient to support his conviction for torture as to Shuford. A defendant commits the offense of torture if, "with the intent to cause cruel or extreme physical or mental pain and suffering, [he or she] inflicts great bodily injury or severe mental pain or suffering upon another person within his or her custody or physical control . . ." MCL 750.85(1). To justify a conviction based on severe mental pain or suffering, the prosecution must present sufficient evidence that the defendant caused "a mental injury that result[ed] in a substantial alteration of mental functioning that [was] manifested in a visibly demonstrable manner . . ." *People v Schaw*, 288 Mich App 231, 234; 791 NW2d 743 (2010), quoting MCL 750.85(2)(d).

The evidence produced at trial was sufficient for a rational jury to find defendant guilty of torture as to Shuford. Shuford's face was "brutally beaten" and he was left bound and gagged in a basement for several hours. Thus, there was sufficient evidence of defendant's intent to commit torture. MCL 750.85(1). See *Lugo*, 214 Mich App at 709-710 (intent can be established by the defendant's actions). Additionally, Shuford testified that he was "traumatized" by the incident. Evidence that Shuford was traumatized was sufficient for a rational jury to find that Shuford suffered a severe mental injury that resulted in a substantial alteration of mental functioning. See *Schaw*, 288 Mich App at 235. In addition to a mental injury, MCL 750.85(d) requires that the injury was "caused by or resulting from," among other things, "[t]he threat that another person will imminently be subjected to death . . ." MCL 750.85(d)(iv). Here, Guest

testified that defendant threatened to kill him while he was bound next to Shuford. This threat of imminent death was sufficient for a rational jury to find that defendant intended to and did inflict severe mental pain or suffering while Shuford was bound and gagged and in defendant's control. See MCL 750.85(d); *Schaw*, 288 Mich App at 235.

We also find that the evidence produced at trial was sufficient to support defendant's conviction for unlawful imprisonment as to Shuford. "[T]o be guilty of unlawful imprisonment under MCL 750.349b(1)(b), (1) a defendant must knowingly restrain a person, and (2) the restrained person must be 'secretly confined.'" *People v Railer*, 288 Mich App 213, 217; 792 NW2d 776 (2010). In this case, there was circumstantial evidence to find that defendant forcibly restrained Shuford by binding and gagging him. Again, even if defendant did not personally bind and gag Shuford, it was reasonable for a rational jury to infer that defendant was involved in binding and gagging Shuford, based on his involvement in binding Guest in a similar manner. See *Carines*, 460 Mich at 757 (circumstantial evidence and reasonable inferences arising therefrom can be used to establish the offense, and a defendant who renders assistance is guilty of the offense under an aiding and abetting theory). Moreover, there was evidence that defendant brought Shuford out of the house and that he left him bound and gagged in a desolate field. Thus, there was evidence from which a rational jury could find beyond a reasonable doubt that defendant knowingly restrained Shuford. MCL 750.349b(3)(a). There was also sufficient evidence for a rational jury to find the second element of the offense, i.e., that defendant "secretly confined" Shuford. "[T]he essence of 'secret confinement' as contemplated by the statute is deprivation of the assistance of others by virtue of the victim's inability to communicate his predicament." *People v Jaffray*, 445 Mich 287, 309; 519 NW2d 108 (1994). Here, defendant participated in binding and gagging Shuford in the basement of a home in such a manner as to prevent him from leaving or calling out for help. Defendant also participated in bringing Shuford, bound and gagged, to a desolate field. Consequently, there was sufficient evidence to find that defendant "secretly confined" Shuford and that he committed the offense of unlawful imprisonment. See *id.*

Next, defendant argues that the trial court should have granted his motion for a directed verdict as to the charges that pertained to Shuford and that there was insufficient evidence for a rational jury to find him guilty beyond a reasonable doubt as to the charges that pertained to Guest. Defendant failed to raise these issues in his statement of questions presented; therefore, this Court need not consider them. *People v Unger*, 278 Mich App 210, 262; 749 NW2d 272 (2008). Additionally, defendant abandons his argument that the evidence was insufficient to support his convictions as to Guest by failing to brief the issue. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). We, however, have reviewed both issues and determined that they lack merit.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Stephen L. Borrello
/s/ Michael J. Riordan