

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MARCUS XAVIER DAVIS,
Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

MARCUS XAVIER DAVIS,

Respondent-Appellant.

UNPUBLISHED

March 23, 2006

No. 258465

Wayne Circuit Court

Family Division

LC No. 04-428924

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Respondent appeals as of right from an order of disposition entered following delinquency proceedings in which the circuit court determined that respondent had committed assault and battery, MCL 750.81, and violated a city ordinance relating to public disturbances. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent's sole claim on appeal is that the evidence was insufficient to sustain the verdict as to the assault and battery charge.

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). We review the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The trial court's factual findings are reviewed for clear error. A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

It is unlawful to assault or to assault and batter another person. MCL 750.81(1). "A simple assault is either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery." *People v Terry*, 217 Mich App

660, 662; 553 NW2d 23 (1996). An attempted-battery assault, one which is sufficiently proximate to the intended victim, demonstrates the defendant's present ability to inflict injury on the victim. *People v Reeves*, 458 Mich 236, 244; 580 NW2d 433 (1998). "A battery is the wilful and harmful or offensive touching of another person which results from an act intended to cause such a contact." *Espinoza v Thomas*, 189 Mich App 110, 119; 472 NW2d 16 (1991). An assault and battery is a consummated assault. *People v Solak*, 146 Mich App 659, 670; 382 NW2d 495 (1985). The defendant's intent may be inferred from all the facts and circumstances of a case, *In re People v Jory*, 443 Mich 403, 419; 505 NW2d 228 (1993), including his words, his conduct, and the manner in which the crime was committed. *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001).

The evidence showed that respondent got involved in a fistfight with another student in the school cafeteria. When the victim, a security guard, tried to break up the fight, he was hit in the back several times. Given that respondent was one of only two combatants and was behind the victim, it can be inferred that he was the one who inflicted the blows. Given that the victim was hit several times, it can be inferred that the blows were intentionally, not accidentally, inflicted. Even if respondent had been trying to commit a battery upon the other student rather than the victim, it is only necessary that the requisite state of mind exist, not that it be directed at any particular person. *People v Lawton*, 196 Mich App 341, 350-351; 492 NW2d 810 (1992). The evidence was sufficient to prove an assault and battery beyond a reasonable doubt.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra