

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ERIC SMITH,

Defendant-Appellant.

UNPUBLISHED

April 30, 2009

No. 282612

Wayne Circuit Court

LC No. 07-008222-FH

Before: Borrello, P.J., and Murphy and M. J. Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of assault with intent to do great bodily harm less than murder, MCL 750.84, ethnic intimidation, MCL 750.147b, and stalking, MCL 750.411h. Defendant was sentenced as a second habitual offender, MCL 769.10, to 47 months to 15 years' imprisonment for the assault conviction, two to three years' imprisonment for the ethnic intimidation conviction, and one to one and one-half years' imprisonment for the stalking conviction. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that there were insufficient findings of fact to support his convictions. He contends that the trial court failed to clearly and specifically explain or resolve the factual conflicts in the testimony and that it also failed to apply the law to the facts with respect to the charged crimes. Defendant argues that the trial court did not explain how it resolved the factual conflict between the victim's and defendant's testimony regarding the number of blows administered by defendant and how the use of fists could support the specific intent to do great bodily harm. We disagree.

Findings of fact are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). Whether the trial court complied with the requirements of a court rule is a question of law that is reviewed de novo. See *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998).

In actions tried without a jury, the trial court must find the facts specially and state separately its conclusions of law as to contested matters. MCR 6.403; MCR 2.517(A)(1); *People v Feldmann*, 181 Mich App 523, 534; 449 NW2d 692 (1989). "The court must state its findings and conclusions on the record or in a written opinion made a part of the record." MCR 6.403. "Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient,

without overelaboration of detail or particularization of facts.” MCR 2.517(A)(2). When findings are insufficient, it is generally proper to remand a case for additional factfinding; however, remand is unnecessary when it is manifest that the trial court was aware of the factual issues, it resolved the issues, and when further explication would not facilitate appellate review. *People v Armstrong*, 175 Mich App 181, 184; 437 NW2d 343 (1989).

The trial court properly and sufficiently articulated its findings of fact and conclusions of law. The court ruled in part:

I heard testimony in this case. I heard testimony . . . regarding the course of conduct that led up to this. We’ve got trucks and wood chips and grim[], intimidati[on]. Quite frankly, we’ve got an attack that is vicious, unprovoked. And this isn’t about wood chips. Sadly, it’s much, much more than that, and it’s a deep, deep anger. I’m not a wise enough man to explain it. . . .

But count one [assault with intent to do great bodily harm], there isn’t doubt in this Court’s mind that this was a vicious attack. This wasn’t a felonious assault. This verged on, verged on and I think the defendant said it himself why he stopped, although I think he stopped much later in the attack than he lets on here today. This borders on an assault with an intent to murder. And thank God it didn’t go there. But I do believe we have an assault with intent to do great bodily harm, no doubt about it. The facts certainly support it. And particularly vicious I might add.

The elements comprising the offense of assault with intent to do great bodily harm are (1) an attempt or threat with force or violence to do corporal harm to another, coupled with (2) an intent to do great bodily harm less than murder, which has been defined as an intent to do serious injury of an aggravated nature. *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005). Here, contrary to defendant’s arguments, the court did resolve conflicts in the testimony, finding in favor of the victim’s account that described a vicious attack and rejecting defendant’s claims as to when he stopped assaulting the victim. The court also rejected defendant’s assertion that he merely lost his temper about woodchips in his driveway. Further, the court factually found that a particularly vicious, unprovoked attack occurred, bordering on an assault with intent to murder, and that the facts established, without any doubt, the commission of the crime. Indeed, the evidence indicated that the victim was punched in the neck and head, that he fell to the ground and was struck by 20 blows, that defendant made racially-related remarks and threatened to finish off the victim if he contacted police, and that the victim suffered a broken jaw and nose, along with losing several teeth.¹ The court was aware of the issues, resolved the issues, and correctly applied the law. The court’s findings were sufficient to facilitate appellate review.²

¹ The victim was hospitalized for four days, undergoing surgery and having his jaw wired shut.

² Any suggestion by defendant that assault with intent to inflict great bodily harm cannot be established based solely on the use of fists lacks merit. MCL 750.81a(1) provides that “a person who assaults an individual *without a weapon* and inflicts serious or aggravated injury upon that
(continued...)

Regarding the ethnic intimidation and stalking charges, the trial court found that the prosecution proved its case beyond a reasonable doubt. The court stated that defendant's actions were not motivated by issues over woodchips or vehicles. The trial court expressly concluded that the prosecution's witnesses testified completely and truthfully about the situation, and the court adopted the facts testified to by these witnesses, which facts, according to the court, fell squarely within the offenses of ethnic intimidation and stalking. The trial court sufficiently created a record that facilitated appellate review, making findings in accord with the requirements of the court rules and case law cited above.

Furthermore, contrary to defendant's argument, the trial court was not required to make specific findings of fact regarding each element of the crime as long as it appeared that the trial court was aware of the issues in this case and correctly applied the law. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992); *People v Wardlaw*, 190 Mich App 318, 320-321; 475 NW2d 387 (1991) (findings that the defendant committed an unprovoked assault on the victim with his truck were sufficient); *People v Vaughn*, 186 Mich App 376, 384; 465 NW2d 365 (1990). Here, based on the record and as reflected above, the trial court was clearly aware of the issues and correctly applied the law.³

Affirmed.

/s/ Stephen L. Borrello
/s/ William B. Murphy
/s/ Michael J. Kelly

(...continued)

individual *without intending to commit murder or to inflict great bodily harm less than murder* is guilty of a misdemeanor." (Emphasis added.)

³ To the extent that defendant implies that the evidence was insufficient to support the convictions, we hold that, viewing the evidence in a light most favorable to the prosecution and resolving all evidentiary conflicts in favor of the state, the evidence was sufficient to establish the commission of the crimes upon which defendant was convicted. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).