

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS MCKINLEY,

Defendant-Appellant.

UNPUBLISHED

May 29, 1998

No. 199988

Detroit Recorder's Court

LC No. 96-001204

Before: Fitzgerald, P.J., and Holbrook, Jr., and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of assault with intent to commit murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, ("felony-firearm"), MCL 750.227b; MSA 28.424(2). Defendant was sentenced to consecutive sentences of eight to twenty years in prison for the assault with intent to commit murder conviction, and two years in prison for the felony-firearm conviction. We affirm.

Defendant's only issue on appeal is that the prosecution failed to present sufficient evidence to support his convictions. "In determining whether sufficient evidence has been presented to sustain a conviction, an appellate court is required to view the evidence in a light most favorable to the prosecution [to] . . . determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994). "Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime." *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). Any questions regarding credibility of witnesses are properly left to the trier of fact. *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991). "The elements of assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Lugo*, 214 Mich App 699, 710; 542 NW2d 921 (1995). "The elements of felony-firearm are that the defendant possessed a firearm during the commission [of] or attempt to commit a felony." *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996).

After reviewing the evidence in a light most favorable to the prosecution, we conclude that there was sufficient evidence to support both of defendant's convictions. The victim was shot twice in the upper back as he stood on the porch of his aunt's house. While it is true that the gun used was never recovered, an eyewitness did testify that he saw defendant standing in the street aiming a long object that looked like a rifle at the porch where the victim was standing. After aiming the object, the eyewitness testified that defendant got in his car and left the scene. The eyewitness also testified that he did not see anyone other than defendant point an object in the direction of the victim at the time of the shooting. Finally, we note that six .22 caliber bullet casings were found on the street where the shooting occurred by one of the police officers dispatched to the scene.

We believe a rational trier of fact could infer from this evidence that it was defendant who assaulted the victim, and that the assault was made with the requisite specific intent needed to support defendant's assault with intent to commit murder conviction. It is reasonable to infer that the long object that defendant aimed at the victim was indeed a rifle. The use of this deadly weapon and the location of the wounds provided evidence of defendant's intent to kill. See *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993) ("The intent to kill may be proven by inference from any facts in evidence."). Likewise, we also believe that the evidence could lead a rational trier of fact to find that the elements of felony-firearm had been established. As just noted, we believe the evidence supports the inference that defendant was armed with a rifle. Because the evidence was sufficient to find that defendant used this deadly weapon with the intent to commit murder, it reasonably follows that the felony-firearm conviction should stand.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Donald E. Holbrook, Jr.

/s/ Mark J. Cavanagh