

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SMITH POWELL KIMBROUGH,

Defendant-Appellant.

UNPUBLISHED

August 4, 1998

No. 199967

Genesee Circuit Court

LC No. 96-054464 FC

Before: Markey, P.J., and Bandstra and Markman, JJ.

PER CURIAM.

A jury convicted defendant of assault with intent to commit great bodily harm less than murder, MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant subsequently pleaded guilty to felon in possession of a firearm, MCL 750.224f; MSA 28.424(6). He was convicted in the shooting of an acquaintance with whom he had a series of arguments over a stolen necklace. The trial court sentenced defendant to a prison term of two years for the felony-firearm conviction, followed by concurrent prison terms of ten to twenty years for the assault conviction and five to ten years for the felon-in-possession conviction. Defendant appeals as of right from the convictions. We affirm.

Defendant's first claim on appeal is that the jury based its guilty verdict of assault with intent to do great bodily harm less than murder on insufficient evidence on the intent element of the crime. We disagree. With respect to determining whether there was sufficient evidence to sustain a conviction, we must view the evidence in a light most favorable to the prosecution and decide whether any rational trier of fact could have found guilt beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 amended on other grounds 441 Mich 1201 (1992); *People v Lugo*, 214 Mich App 699, 710; 542 NW2d 921 (1995). Satisfactory proof of the elements of a crime can be found in circumstantial evidence and reasonable inferences from the evidence. *Lugo, supra* at 710. A reasonable factfinder could infer that defendant intended to do great bodily harm less than murder where the facts are viewed in a light most favorable to the prosecution. Here, defendant and the victim had been fighting over a necklace for several months prior to the incident. Defendant ran over the victim's bicycle and stated "I'm not running anymore." Defendant then met four friends who provided him with

a shotgun. Once defendant learned that the shotgun did not have bullets, he went to another location to get ammunition for the shotgun. Defendant, who appeared agitated, then went to the victim's house and began honking his car's horn until the victim appeared. The victim approached the car, and when he got within four to five feet of the car, defendant raised the shotgun and shot the victim in the chest. Given the events leading up to the shooting and the location of the wound, a reasonable juror could well infer that defendant intended to do great bodily harm less than murder. Therefore, we find that the evidence was sufficient to sustain defendant's assault conviction.

Next, defendant claims that the trial court's decision to deny the motion in limine allowing defendant's credibility to be impeached with a prior conviction for unlawful use of a motor vehicle constituted reversible error. We need not consider the merits of this claim because even if the trial court abused its discretion when it permitted the impeachment by prior conviction-- and we do not decide this one way or the other-- it was not reversible error because any alleged error was harmless. *People v Mateo*, 453 Mich 203, 221; 551 NW2d 891 (1996). Harmless error requires reversal if the "error was prejudicial." *Id.* at 215. The reviewing court must consider the nature of the error and determine its impact in view of the "weight and strength of the untainted evidence." *Id.* Where the evidence of guilt is "overwhelming," the reviewing court does not need to address the level of confidence that it attributes to its determination that the error was not prejudicial and thus harmless. *Id.* at 207, 218.

Overwhelming evidence of defendant's guilt existed here. Although defendant argues that his credibility was of critical importance, his own testimony as to the facts surrounding the shooting supported a conviction. Defendant admitted fighting with the victim over a necklace that he and the victim stole from someone else; he admitted to running over the victim's bicycle, albeit accidentally, and telling the victim he was not running from him anymore; he admitted getting a shotgun after the bicycle incident; he acknowledged that he kept the shotgun in his car knowing that it was loaded; and he admitted going to the victim's home and pointing a loaded shotgun at the victim. Considering the extent of any error in the context of the weight and strength of the untainted evidence that demonstrated overwhelming evidence of defendant's guilt, we conclude that the alleged error was not prejudicial and constituted harmless error.

Affirmed.

/s/ Jane E. Markey

/s/ Richard A. Bandstra

/s/ Stephen J. Markman