STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 21, 1999
v	No. 205398 Recorder's Court
JAMES RUSSEL JOHNSON, JR., Defendant-Appellant.	LC No. 97-001364

Before: White, P.J., and Sawyer and Griffin, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of attempted assault with intent to do great bodily harm less than murder, MCL 750.92; MSA 28.287; MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to thirty months to five years in prison, to be served consecutive to a term of two years in prison for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant was involved in an altercation with coworker Sherman Griffin, at the home of another coworker, Michael Powell. Defendant and Griffin had engaged in a heated argument earlier that day, during which defendant hit Griffin in the arm and both men made threats of bodily harm. The dispute culminated that evening, when defendant aimed a gun at Griffin's head. As Griffin attempted to disarm defendant, the gun discharged and Griffin suffered a nonfatal shot in the back of his neck and head.

Defendant first challenges the sufficiency of the evidence. This Court examines the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact would be justified in finding guilt beyond a reasonable doubt. *People v Legg*, 197 Mich App 131, 132; 494 NW2d 797 (1992). "A trier of fact may make reasonable inferences from the facts, if the inferences are supported by direct or circumstantial evidence. The evidence is sufficient if, taken as a whole, it justifies submitting the case to the trier of fact." *Id*.

The crime of assault with intent to do great bodily harm is a specific intent crime. *People v Bailey*, 451 Mich 657, 668-669; 549 NW2d 325 (1996). "The elements of assault with intent to do

great bodily harm less than murder are (1) an assault, i.e., 'an attempt or offer with force and violence to do corporal hurt to another' coupled with (2) a specific intent to do great bodily harm less than murder. *Id*., quoting *People v Smith*, 217 Mich 669, 673; 187 NW 304 (1922); MCL 750.84; MSA 28.279. "An attempt consists of: '(1) an intent to do an act or to bring about certain consequences which would in law amount to a crime; and (2) an act in furtherance of that intent which, as it is commonly put, goes beyond mere preparation.'" *People v Jones*, 443 Mich 88, 100; 504 NW2d 158 (1993). The crime of attempt also requires proof of specific intent to commit the underlying offense. *People v Strand*, 213 Mich App 100, 103; 539 NW2d 739 (1995). "Specific intent is defined as a particular criminal intent beyond the act done[.]" *People v Jensen*, 231 Mich App 439, 451; 586 NW2d 748 (1998).

Defendant argued at trial that the evidence strongly supported his theory that the gun discharged accidentally. Powell testified that the gun "went off" when Griffin tried to knock the gun out of defendant's hand. Defendant claims that, given this evidence, the trier of fact could not have found beyond a reasonable doubt that defendant acted with the specific intent to cause great bodily harm. We disagree.

The judge resolved the issue and found that the shooting was not the result of an accident. We hold that the evidence was sufficient to support the finding that defendant intentionally fired the gun and that he intended to cause Griffin great bodily harm. Defendant and Griffin had argued earlier that day about payment that defendant believed he was owed. Both men had exchanged threats of bodily harm. Griffin was in the process of leaving Powell's home, and as he approached his car, defendant called him back toward the house. Again the men argued, and defendant pulled out a gun and aimed it at Griffin's head several times. While Powell testified that the gun went off when Griffin tried to disarm defendant, Griffin testified that he did not hit or push defendant just before he was shot. Furthermore, defendant's words immediately after the incident strongly suggest that his actions were intentional. Defendant stood over Griffin and told him that he would blow his head off if he did not shut up. Based upon this evidence, we conclude that sufficient evidence was presented to justify the court in finding beyond a reasonable doubt that defendant acted intentionally.

Defendant next alleges that the judge's findings were insufficient to establish whether she correctly applied the law to the facts, because the findings did not specifically address the possibility of an accidental shooting. "The sufficiency of factual findings cannot be judged on their face alone; the findings must be reviewed in the context of the specific legal and factual issues raised by the parties and the evidence." *People v Rushlow*, 179 Mich App 172, 177; 445 NW2d 222 (1989), aff'd 437 Mich 149; 468 NW2d 487 (1991). MCR 2.517(2) provides that "brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts." The court's findings must "adequately reflect that the trial court was aware of the issues in the case and correctly applied the law." *People v Simon*, 189 Mich App 565, 568-569; 473 NW2d 785 (1991). We conclude that the judge's findings reflect her awareness of the issues and her correct application of the law.

The judge stated her findings in compliance with MCR 2.517(A)(2) and MCR 6.403. The court found that defendant "pointed the gun and fired." Such a finding implicitly resolves the question whether the shooting was accidental. Furthermore, review of the record indicates the judge's

awareness of defendant's position that the gun discharged accidentally. The judge's comments during the prosecution's closing argument summarized the issues, and expressly mentioned the possibility of accident. Furthermore, the judge's findings reflect that she instructed herself on the lesser included offense of careless, reckless, or negligent discharge of a firearm with injury resulting, MCL 752.861; MSA 28.436(21). The judge rejected defendant's theory of accident when she found that defendant "pointed the gun and fired." We conclude that the trial court's findings were sufficient to show that it correctly applied the law to the facts.

Finally, defendant argues that the court improperly excused the prosecution's failure to produce endorsed witness Gregory Nerves. MCL 767.40a(4); MSA 28.980(1)(4) provides that "[t]he prosecuting attorney may add or delete from the list of witnesses he or she intends to call at trial at any time upon leave of the court and for good cause shown or by stipulation of the parties." *People v Burwick*, 450 Mich 281, 292; 537 NW2d 813 (1995). See also *People v Jackson*, 178 Mich App 62, 65; 443 NW2d 423 (1989). A judge's decision to allow the deletion of a witness from the witness list is "reversible only for an abuse of discretion." *Burwick*, *supra*, 450 Mich 291. We reject defendant's argument that the judge abused her discretion when she excused the prosecution from producing endorsed witness Nerves.

Contrary to defendant's argument, the record does not support defendant's contention that Nerves was an eyewitness to the incident. Both Powell and Griffin testified that the only persons present during the altercation were themselves and defendant. Furthermore, the prosecution demonstrated good cause to excuse Nerves' presence at trial. The prosecution mailed a subpoena, and received confirmation by telephone that Nerves had received the subpoena. The prosecution maintained that Nerves' testimony would be cumulative and unnecessary. In objection, defendant made no claim that Nerves was an eyewitness to the incident. Nor did defendant assert the relevance of his testimony to defendant's theory of the case. Therefore, we conclude that the judge did not abuse her discretion by excusing prosecution witness Nerves.

Affirmed.

/s/ Helene N. White
/s/ David H. Sawyer
/s/ Richard Allen Griffin