STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 25, 2000
v	No. 217659 Midland Circuit Court
LONNY DEAN BRADSHAW, Defendant-Appellant.	LC No. 98-008878-FC

Before: Saad, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to do great bodily harm less then 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 was sentenced to three to ten years' imprisonment for the assault conviction, and a consecutive two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that he was denied due process of law because he was convicted based on insufficient evidence. We disagree. In reviewing the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could find that the elements of the crime charged were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

The elements of assault with intent to commit great bodily harm less then murder, MCL 750.84; MSA 28.279, are an attempt or offer with force to do corporal harm to another, coupled with intent to do great bodily harm less than murder. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). Defendant argues that the prosecution did not establish intent. The only requirement with regard to intent is that a defendant have the intent to do great bodily harm; the fact that he was provoked is irrelevant. *People v Mitchell*, 149 Mich App 36, 38-39; 385 NW2d 717 (1986). Assault with intent to commit great bodily harm less than murder does not require deliberation. *Id*. at 41. "The specific intent necessary to constitute the offense may be found in conduct as well as words." *People v Mack*, 112 Mich App 605, 611; 317 NW2d 190 (1981). Intent may be proven by the facts

and circumstances that surround the case. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992). Because a defendant's state of mind is difficult to prove, minimal circumstantial evidence is sufficient. *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984).

In this case, adequate evidence was presented regarding defendant's intent to commit great bodily harm. Defendant became upset with the victim because the victim used money given to him by defendant to buy cigarettes instead of milk. This disagreement led to a physical confrontation between them. Afterward, defendant obtained his shotgun and fired two shots as the victim fled. The victim sustained a gunshot wound in the neck.

Defendant maintains that the testimony of ballistics experts established that the shotgun pellet that struck the victim must have been deflected. Defendant argues that this is proof that the victim's wound was inflicted accidentally. Although this theory was presented to the jury, it is apparent that it was rejected. Issues of credibility are properly left to the jury and will not be resolved anew by this Court on appeal. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Here, defendant used a shotgun to resolve his dispute with the victim. The use of a lethal weapon is the kind of evidence that will support an inference of an intent to harm. See *People v Ray*, 56 Mich App 610, 615; 224 NW2d 735 (1974). Viewing the evidence in a light most favorable to the prosecution, sufficient evidence was presented from which a rational trier of fact could find defendant guilty beyond a reasonable doubt of assault with intent to commit great bodily harm less than murder.

Next, defendant argues that the trial court erred in denying his motion for mistrial, when defendant did not receive discovery until the second day of trial, despite several specific requests. We disagree. A ruling on a motion for mistrial is within the sound discretion of the trial court. *People v Hackney*, 183 Mich App 516, 531; 455 NW2d 358 (1990). The trial court's remedy for failure to comply with discovery is also reviewed for an abuse of discretion. *People v Davie (After Remand)*, 225 Mich App 592, 597-598; 571 NW2d 229 (1997).

Defendant argues that his due process rights were violated by the prosecutor's failure to turn over a pellet found at the crime scene the day after the shooting. Defendants have a due process right to exculpatory evidence that would raise a reasonable doubt about guilt regardless whether the defense makes a request. *People v Stanaway*, 446 Mich 643, 666; 521 NW2d 557 (1994). Because the pellet evidence was not exculpatory to defendant, as defense counsel agreed at trial, the discovery violation did not rise to the level associated with a due process violation.

"It has long been the law in this state that a defendant is entitled to have produced at trial all the evidence bearing on his guilt or innocence [that] is within the control of the prosecutor." *People v Florinchi*, 84 Mich App 128, 133; 269 NW2d 500 (1978). MCR 6.201(B)(1) mandates that, upon request, the prosecutor turn over any exculpatory information or evidence known to the prosecuting attorney. While earlier case law suggests that prosecutorial noncompliance with a discovery order would result in reversal unless the failure to divulge was harmless beyond a reasonable doubt, see *People v Pace*, 102 Mich App 522, 530-531; 302 NW2d 216 (1980), more recent case law is consistent with MCR 6.201 and holds that questions of noncompliance with discovery orders or agreements are subject to the discretion of the trial court and that a trial court must exercise discretion in

fashioning a remedy for noncompliance with a discovery statute, rule, order or agreement. *People v Taylor*, 159 Mich App 468, 487; 406 NW2d 859 (1987). The remedy must balance the interests of the courts, the public, and the parties. *Id.* This discretion requires an inquiry into all the relevant circumstances, including the causes of the tardy or total noncompliance, as well as a showing by the objecting party of actual prejudice. *Davie*, *supra* at 598. In the present case, the trial court's remedy of precluding the prosecution from mentioning the discovery of the pellet was an appropriate remedy that preserved defendant's theory that Compton was accidentally injured by a ricocheting pellet. Under these circumstances, the trial court did not abuse its discretion in fashioning a remedy and by denying defendant's mistrial motion.

Finally, we find no merit to defendant's contention that his conviction should be reversed for violation of the 180-day rule pursuant to MCL 780.131; MSA 28.969(1). The Legislature intended that the statute apply to an inmate who is incarcerated in the Department of Corrections as a result of another conviction, not including the untried information. *People v Chambers*, 439 Mich 111, 115; 479 NW2d 346 (1992). "[T]he purpose off the 180-day rule is to dispose of untried charges against prison inmates so that sentences may run concurrently." *People v Chavies*, 234 Mich App 274, 279; 593 NW2d 655 (1999), quoting *People v Bell*, 209 Mich App 273, 279; 530 NW2d 167 (1995). The statute does not apply to pretrial detainees, *People v Holbrook*, 180 Mich App 710, 712; 447 NW2d 796 (1989), or to defendants being held in the county jail. *People v Walker*, 142 Mich App 523, 527-528; 370 NW2d 394 (1985). Because it is undisputed that defendant was arrested at home and held in the Midland County jail pending trial, the 180-day rule does not apply to defendant.

Affirmed.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Jane E. Markey