STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 14, 2000
v	No. 214686 Wayne Circuit Court
KANDICE KHALIL HALL, Defendant-Appellant.	LC No. 97-001648

Before: Jansen, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

The prosecution charged defendant with possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), possession with intent to deliver less than fifty grams of heroin, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), assault with intent to 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). At defendant's bench trial, the court granted defendant's motion for a directed verdict and dismissed the charges of possession with intent to deliver less than fifty grams of cocaine and heroin. The court convicted defendant of assault with intent to murder and felony-firearm. Defendant received a sentence of two to ten years in prison for the assault with intent to murder conviction, and two years in prison for the felony-firearm conviction. We affirm.

Defendant first asserts that the prosecution presented insufficient evidence to support her conviction for assault with intent to murder. In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could find that the prosecutor established the essential elements of the crime beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999); *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Joseph*, 237 Mich App 18, 20; 601 NW2d 882 (1999).

"The elements of the crime of assault with intent to murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Plummer*, 229 Mich App 293, 305; 581 NW2d 753 (1998). Circumstantial evidence and reasonable inferences arising therefrom may constitute satisfactory proof of the elements of the offense. *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993). The

prosecution may establish an intent to kill through inference from the facts in evidence. *Id*. Because proving a defendant's state of mind is difficult, minimal circumstantial evidence is sufficient. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). "All conflicts in the evidence must be resolved in favor of the prosecution." *Id*.

In *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996), the prosecution presented testimony that the defendant pointed a gun at his former girlfriend's boyfriend and that the defendant warned the boyfriend not to come any closer or he would kill him. *Id*. The defendant then pulled the trigger several times, but no bullets fired. *Id*. This Court held that the testimony was sufficient for a reasonable trier of fact to find that the prosecution established all the elements of assault with intent to commit murder beyond a reasonable doubt. *Id*.

The facts of the instant case are no less compelling than those in *Davis*. The officers at the scene testified that they announced their presence several times. The officers further testified that when defendant surrendered, she said, "okay, officer, I give up." Additionally, both Officer Gaines and Officer Fort saw defendant aiming and firing a semi-automatic handgun at Gaines from a stooped or squatting position in a closet near the upstairs stairway landing. Gaines also testified that the shots fired in his direction put him in fear for his life. Finally, Gaines testified that when defendant was apprehended, she stated that she would have continued firing had she not run out of bullets. The fact that the trial court may have deemed the testimony of the officers more credible than defendant's testimony is not an issue for this Court. This Court will not interfere with the factfinder's role of determining the weight of evidence or the credibility of witnesses. *McRunels*, *supra* at 181. Therefore, viewed in a light most favorable to the prosecution, the evidence was sufficient to support defendant's conviction for assault with intent to murder. *Davis*, *supra* at 53.

Next, defendant contends that the trial court erred when it denied her motion to quash the evidence that the police obtained during the search of the residence. To prevail on this claim, defendant must show by a preponderance of the evidence that the affiant knowingly and intentionally, or with reckless disregard for the truth, inserted false material into the affidavit and that the false material was necessary to a finding of probable cause. *People v Williams*, 212 Mich App 607, 610; 538 NW2d 89 (1995), overruled in part on other grounds *People v Burgenmeyer*, 461 Mich 431; 606 NW2d 645 (2000).

According to defendant, that the informant could not be located and was not available to testify at trial made it impossible to determine if the drug buy which affiant Fort alleged in the warrant actually occurred. To buttress this argument, defendant elicited the testimony of Kemdria Hodge, who testified that no drug buy took place on February 4, 1997, at the house on Petoskey. However, Fort testified that, on the same date, his informant made a controlled buy at the house on Petoskey. He also testified that prior to sending the source to the location, he did a complete search of the source to make sure the source was not carrying any additional money or drugs. Fort was a block away when the buy took place. The source went into the house on Petoskey, remained for approximately two to three minutes, and returned to Fort with suspected cocaine. Fort testified that he was truthful about these activities and that he had no reason to falsify the information in the search warrant.

The trial court stated, "in this case, based on Officer Fort's testimony, I don't think he made any false statements in the affidavit." Defendant, however, urges this Court to reexamine the credibility of Fort's testimony. We give great deference to the superior ability of the trial court to assess the credibility of a witness. *People v Eggleston*, 149 Mich App 665, 671; 386 NW2d 637 (1986). The credibility of witnesses is a matter for the trial court, as the trier of fact, to decide. *People v Fetterley*, 229 Mich App 511, 545; 583 NW2d 199 (1998); *People v Givans*, 227 Mich App 113, 123-124; 575 NW2d 84 (1997). Therefore, the trial court was in the best position to assess the credibility of witnesses and, if it decided that Fort's testimony was more credible than Hodge's testimony, that determination was within its discretion. *Fetterley*, *supra* at 545.

This Court has held that a controlled purchase of cocaine is sufficient to establish probable cause. *People v Sardy*, 216 Mich App 111, 114; 549 NW2d 23 (1996); *People v Head*, 211 Mich App 205, 209; 535 NW2d 563 (1995). Based on Fort's testimony, the source participated in a controlled buy at the house on Petoskey which precipitated the search warrant and subsequent raid of the premises. Although Fort did not actually witness the drug buy, he conducted a search of the informant before he entered and did not find any drugs. Fort watched the informant enter the house. Shortly thereafter, the informant returned to Fort with cocaine. This information formed an adequate basis to establish probable cause to justify the issuance of the warrant. *Sardy*, *supra* at 114. Consequently, the trial court did not err in denying defendant's motion to quash and suppress evidence. *Id.*

Affirmed.

/s/ Kathleen Jansen
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell