

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHEN P. DAVIS,

Defendant-Appellant.

UNPUBLISHED

July 27, 2001

No. 223061

Wayne Circuit Court

LC No. 98-011192

Before: Wilder, P.J., and Hood and Griffin, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of assault with intent to commit murder, MCL 750.83, two counts of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent terms of twenty to forty years' imprisonment on the assault with intent to murder conviction and two terms of one to five years' imprisonment for the felonious assault convictions, to be served consecutively to the mandatory two-year term for felony-firearm. Defendant appeals as of right from his conviction of assault with intent to commit murder. We affirm.

In reviewing a nonjury criminal case, this Court "is required to review the entire record to determine whether the trial judge clearly erred." *People v Rush*, 48 Mich App 478, 482; 210 NW2d 467 (1973). This Court must review the record to determine whether there was sufficient evidence to warrant a verdict of guilty beyond a reasonable doubt. *People v Garcia*, 398 Mich 250, 263; 247 NW2d 547 (1976). The trial court's factual findings are reviewed for clear error. A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). This Court "will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses." *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

The elements 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 Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). Positive proof that the defendant intended to kill the victim is not required. *People v Moore*, 129 Mich App 354, 356; 341 NW2d 149 (1983). The defendant's intent to kill may be proven by inference from any facts in evidence, including proof

of the victim's injuries, and minimal circumstantial evidence is sufficient. *People v Mills*, 450 Mich 61, 71; 537 NW2d 909 (1995), modified 450 Mich 1212 (1995); *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). The intentional discharge of a firearm at someone within range, done without justification or excuse, is sufficient to prove assault with intent to commit murder. *People v Johnson*, 54 Mich App 303, 304; 220 NW2d 705 (1974).

The evidence showed that defendant approached the victim and inquired regarding his name. When the victim saw that defendant had a gun in his hand, he started to run away. Defendant followed and fired several shots, striking the victim three times. The victim was admitted to the hospital in critical condition and remained hospitalized for four weeks. Such evidence was sufficient to permit a reasonable inference that defendant intended to kill the victim. *Id.*

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin