

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

CALVIN WARE,

Defendant-Appellant.

UNPUBLISHED

February 5, 2002

No. 227337

Wayne Circuit Court

LC No. 99-004850

Before: Neff, P.J., and K. F. Kelly and B. B. MacKenzie*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as a third habitual offender, MCL 769.11, to a term of 3½ to 10 years' imprisonment for the assault conviction and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant argues that the evidence was insufficient to support the requisite intent element for assault with intent to commit great bodily harm. We disagree. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 478, amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences arising from the evidence may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

Assault with intent to commit great bodily harm less than murder requires proof of (1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder. *People v Harrington*, 194 Mich App 424, 428; 487 NW2d 479 (1992). Defendant correctly notes that assault with intent to commit great bodily harm is a specific intent crime. *People v Eggleston*, 149 Mich App 665, 668; 386 NW2d 637 (1986). The specific intent to harm may be inferred from the circumstantial evidence, including the defendant's conduct. *Id.*

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

The evidence showed that, as defendant and the victim were fighting on the porch of their two-family flat, defendant directed his girlfriend to retrieve his gun. The victim then ceased fighting, went into the doorway of his upper flat, and proceeded up the stairs. Meanwhile, defendant retrieved a sawed-off shotgun, leveled it toward the victim's front door, and fired a shot into the victim's home. The victim, who was three feet from the door, was struck in his hands and legs by the gun pellets. After shooting into the victim's home, defendant kicked the door open. When the victim told defendant that he had shot him, defendant responded, "you lucky I didn't aim higher." This evidence, viewed most favorably to the prosecution, was sufficient to enable a rational trier of fact to find that the specific intent element was proved beyond a reasonable doubt. See *People v Buckner*, 144 Mich App 691, 696-697; 375 NW2d 794 (1985).

Next, defendant claims that he must be resentenced because, although the court intended to sentence him to a total minimum term of 5½ years, the Department of Corrections is misinterpreting his total minimum sentence as being 7½ years. On January 26, 2001, this Court remanded this case for resentencing and defendant's judgment of sentence was corrected in accordance with defendant's request. Therefore, this issue is moot. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

Affirmed.

/s/ Janet T. Neff
/s/ Kirsten Frank Kelly
/s/ Barbara B. MacKenzie