

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY AUGUSTA POWELL,

Defendant-Appellant.

UNPUBLISHED

October 30, 2007

No. 272403

Wayne Circuit Court

LC No. 06-001978-01

---

Before: Zahra, P.J, and White and O’Connell, JJ.

PER CURIAM.

Defendant was convicted of assault with intent to murder, MCL 750.83, discharge of a weapon in a building, MCL 750.234b, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b.<sup>1</sup> The trial court sentenced defendant to 12 to 20 years in prison for the assault with intent to murder conviction, two to four years in prison for the discharge of a weapon in a building conviction, and two years in prison for the felony-firearm convictions. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant’s sole argument on appeal is that there is insufficient evidence to support his convictions. We disagree. This Court reviews sufficiency of the evidence claims de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). Therefore, this Court “must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Defendant contends that the prosecutor failed to prove beyond a reasonable doubt that he possessed a gun and shot the victim, Charles Scott. Defendant argues that the prosecution did not enter a gun into evidence. Defendant further argues that Scott’s view and recollection of the shooting were distorted; he did not conclusively identify a gun in defendant’s hands, whereas multiple witnesses testified that defendant was unarmed. In addition, defendant notes that Mal Porties did not observe the shooting; Porties merely heard defendant say that he had a weapon, not necessarily a gun. Also, Porties felt an object on defendant’s chest, but did not identify it as a weapon. Moreover, defendant’s witnesses testified that Porties was not at the party and could not have spoken to defendant. Finally, defendant claims that other guests could have shot

Scott because defendant was not the only guest near the speakers during the shooting.

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 Brown*, 267 Mich App 141, 147-148; 703 NW2d 230 (2005); MCL 750.83. The elements of discharge of a weapon in a building are: (1) the defendant intentionally discharges a firearm, (2) in a facility, (3) the defendant knows or has reason to believe is an occupied structure, (4) in reckless disregard for the safety of any individual. *People v Henry*, 239 Mich App 140, 143; 607 NW2d 767 (1999). The elements of felony-firearm are: (1) the defendant possessed a firearm, (2) during the commission of, or attempt to commit, a felony. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999); MCL 750.227b. For each conviction, the only question on appeal is whether defendant possessed a gun and shot Scott.

Although there was a search and frisk policy at the bar, testimony suggested that Rough Riders, like defendant, occasionally bypassed this security checkpoint. Further, Porties testified that defendant was actually armed with a weapon inside the bar on the night of the shooting. He also felt an unidentifiable object in defendant’s vest. Later, Scott argued with Aylaina Verdejo and hurt her feelings. Then, Verdejo told defendant, “Shoot him.” Seconds later, Scott was shot. Scott saw fire from what appeared to be a gun. That fire was five feet away, directly in front of defendant. No one else stood near the fire or between Scott and defendant. Defendant ran out of the back exit of the building after the shooting. Therefore, there was sufficient evidence for the jury to find beyond a reasonable doubt that defendant was armed with a gun.

Defendant also contends that the evidence was insufficient because of witness inconsistencies. Conflicting testimony and witness credibility are jury issues and this Court generally defers to the jury’s resolution. *Avant, supra*, p 506. Here, the jury resolved that Porties spoke to defendant at the party about his weapon and felt an object inside his vest, despite conflicting testimony from defendant and other guests. Similarly, the jury resolved that defendant shot Scott even though Scott did not actually see defendant’s gun in the dimly-lit bar. This Court will not disrupt the jury’s credibility resolution.

Finally, defendant contends that the prosecution failed to prove a motive that connected defendant to the shooting. Instead, defendant argues that he had a good relationship with Scott and was not intimate with Verdejo. This argument is unpersuasive. Motive is not an element of assault with intent to murder. *Brown, supra*, pp 147-148. Motive may be shown to prove the intent element, but despite these facts, the jury found beyond a reasonable doubt that defendant had the actual intent to kill. Again, this Court will not disrupt the jury’s resolution of these issues.

Affirmed.

/s/ Brian K. Zahra

/s/ Helene N. White

/s/ Peter D. O’Connell