

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS PERDUE,

Defendant-Appellant.

UNPUBLISHED

March 18, 2008

No. 275838

Wayne Circuit Court

LC No. 06-006234-01

Before: O’Connell, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to commit murder, MCL 750.83, assault with intent to commit great bodily harm, MCL 750.84, felonious assault, MCL 750.82, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to 10 ½ to 16 years for the assault with intent to murder conviction, five to ten years for the assault with intent to commit great bodily harm conviction, two to four years for the felonious assault conviction, two to five years for the felon in possession of a firearm conviction, and two years for the felony-firearm conviction. Defendant appeals as of right. This case is being decided without oral argument pursuant to MCR 7.214(E). For the reasons set forth in this opinion, we affirm.

Defendant argues there was insufficient evidence to support convictions for the assault offenses because defendant was acting in self-defense.

This Court reviews challenges to the sufficiency of the evidence de novo. *People v Osantowski*, 274 Mich App 593, 613-614; 736 NW2d 289 (2007). In reviewing the sufficiency of the evidence in a criminal case, this Court must review the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001).

The elements of assault with intent to commit murder are an assault, with an actual intent to kill, which, if successful, would make the killing murder. MCL 750.83; *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005). The elements of assault with intent to do great bodily harm less than murder are an assault and the intent to do great bodily harm less than murder. MCL 750.84; *Brown, supra* at 147. The elements of felonious assault are an assault

with a dangerous weapon with the intent to injure or place the victim in reasonable apprehension of an immediate battery. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

In this case, there is sufficient evidence supporting defendant's convictions for all the assault charges. The record is clear that defendant pointed the gun at his first victim's head and pulled the trigger, and, but for the gun jamming, defendant would have killed this victim. After defendant cleared the jam, he shot this victim in the hand and abdomen. Defendant continued his assault by pursuing this victim into the backyard and shooting him in the back, finally ending the assault, when, standing over this victim, defendant ran out of bullets. Furthermore, the record is clear that defendant shot a second victim in the chest after clearing the weapon jam. These facts as presented at trial clearly provide sufficient to support defendant's convictions on the assault charges.

Defendant next argues that he acted in self-defense because he honestly and reasonably believed he was in immediate danger because the first victim was armed with a pipe and threatened to kill defendant. Due to the fact that nothing in the record supports a theory that defendant acted in self-defense, we reject this argument.

In Michigan, self-defense is a lawful act if the defendant honestly and reasonably believes that his life is in imminent danger or that there is a threat of serious bodily harm. *People v Kurr*, 253 Mich App 317, 320-321; 654 NW2d 651 (2002). Self-defense is not available when a defendant is the aggressor unless he withdraws from any further encounter with the victim and communicates such withdrawal to the victim. *People v Kemp*, 202 Mich App 318, 323; 508 NW2d 184 (1993). Furthermore, a participant in voluntary mutual combat is required to take advantage of any reasonable and safe avenue of retreat before using deadly force against his adversary. *People v Riddle*, 467 Mich 116, 120; 649 NW2d 30 (2002).

Here, defendant armed himself with a gun to investigate and address an assault upon his uncle. At a house on East Outer Drive, defendant began brandishing the gun the moment the victims arrived. The first victim retrieved the pipe for use against defendant only because defendant pointed his gun at this victim's head and attempted to shoot him. Furthermore, defendant could not honestly and reasonably believe his life was in imminent danger because his first victim, after being shot in the finger, began to run away. As the first victim was running, defendant shot him in the back. Thus, defendant was not acting in self-defense because defendant was the initial aggressor. Additionally, the evidence clearly indicates that defendant failed to communicate withdrawal, and failed to seek a reasonable and safe avenue of retreat.

Affirmed.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher