STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee	UNPUBLISHED March 5, 2009
v	No. 281379 Wayne Circuit Court
ROOSEVELT LASHUN DUNBAR, Defendant-Appellant.	LC No. 07-004487

Before: Jansen, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from his bench-trial convictions of assault with intent to do great bodily harm less than murder, MCL 750.84, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and possession of firearm by a person convicted of a felony (felon in possession), MCL 750.224f. Defendant was sentenced to two years in prison for the felony-firearm conviction, five to 15 years in prison for the assault with intent to do great bodily harm less than murder conviction, and two to five years in prison for the felon-in-possession conviction. We affirm.

Defendant argues that the prosecution failed to rebut his self-defense claim and, therefore, did not provide sufficient evidence to prove him guilty beyond a reasonable doubt of assault with intent to cause great bodily harm less than murder. We disagree.

Sufficiency of the evidence is reviewed de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). "[A] 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 Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

> This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. . . . Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. [*People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007).]

A person commits assault with intent to do great bodily harm less than murder when there is "(1) an assault, i.e., 'an attempt or offer with force and violence to do corporal hurt to

another' coupled with (2) a specific intent to do great bodily harm less than murder." *People v Bailey*, 451 Mich 657, 668-669; 549 NW2d 325 (1996), amended 453 Mich 1204 (1996), quoting *People v Smith*, 217 Mich 669, 673; 187 NW 304 (1922). "This Court has defined the intent to do great bodily harm as 'an intent to do serious injury of an aggravated nature.'" *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005), quoting *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986).

Barbara Cox, Romie Tuft, and Willia McGlothin testified, and defendant does not dispute, that, during a heated argument, defendant raised a gun and fired at Tuft, striking him on the right side of his face near his jaw. As a result of the gunshot, Tuft spent two weeks in the hospital. He still suffers from effects of the injury. On cross-examination of Tuft, defense counsel did attempt to imply that perhaps the gun just "went off," but Tuft denied it and defendant presented no evidence to suggest that the shooting was accidental. Thus, the prosecution presented sufficient evidence from which a rational trier of fact could conclude that defendant committed an assault with the intent to do great bodily harm, i.e., to do serious injury of an aggravated nature.

Defendant argues, however, that he acted in self-defense. To show that he acted in self-defense, a defendant must present evidence that he honestly and reasonably believed that his life was in imminent danger or that there was a threat of serious bodily harm. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993). In addition, "[a] defendant is not entitled to use any more force than is necessary to defend himself." *Id*. Finally, "[t]he 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." *Id*. at 323. "'Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt.'" *People v James*, 267 Mich App 675, 677; 705 NW2d 724 (2005), quoting *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

Defendant notes that Tuft admitted at trial that he shot at defendant with a nine-millimeter handgun. Moreover, the Evidence Technician Unit recovered evidence from the scene showing that all nine spent nine-millimeter casings came from the same gun. As a result, defendant contends that he honestly and reasonably believed that he was in danger of imminent death or serious bodily harm. Defendant claims that he returned fired only after Tuft fired all nine shots at him. He also points out that Tuft admitted to being the aggressor. Tuft expected there would be a fight when he met defendant and told defendant he would "beat his a--." Tuft had a gun with him at the time, admitted to being angry, and interjected himself into the argument between defendant and Cox. In Tuft's own words, "[a] man stepping up initiates enough."

It is clear from the testimony, however, that *both men arrived at the shooting location* angry, armed, and ready for a fight. Neither man attempted to back down or withdraw from the altercation, and evidence showed that it was *defendant* who escalated the situation by first drawing and then firing a gun, and, as noted, "[a] defendant is not entitled to use any more force than is necessary to defend himself." *Kemp*, *supra*, 202 Mich App 322.

Defendant's assertion that he returned fire only after Tuft fired at him nine times is refuted by trial testimony. Cox, Tuft, and McGlothin all testified that defendant drew his gun and fired first. Though McGlothin testified that Tuft removed his jacket as if to signal he was

ready for a fight, it was a fistfight that was indicated, not a gunfight; McGlothin did not see Tuft with a gun. Thus, there was sufficient evidence to prove beyond a reasonable doubt that defendant acted as the aggressor by escalating the altercation into a gunfight. Therefore, defendant's self-defense argument is without merit.

We do observe that certain physical evidence seems inconsistent with the testimony presented at trial. Tuft admitted to possessing and firing a nine-millimeter weapon three times, and Cox and McGlothin confirmed that he returned fire. More than three nine-millimeter spent shell casings were found, however, and they were all from the same gun.

The trial court evidently did not find this apparent contradiction to be significant. "A trial court's factual findings are generally reviewed for clear error." *People v Gillam*, 479 Mich 253, 260; 734 NW2d 585 (2007). A finding is clearly erroneous if, after a review of the entire record, we are left with a definite and firm conviction that a mistake has been made. *People v Swirles (After Remand)*, 218 Mich App 133, 136; 553 NW2d 357 (1996). Deference is given to the trial court in matters of witness credibility and weight of the evidence. *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000). Considering all the evidence, we are not left with a definite and firm conviction that a mistake has been made. Even if the physical evidence suggests that Tuft had his gun with him when he entered the fray and returned fire while on the lawn, there is still no evidence to suggest that he fired first – or even drew his weapon – before being shot. The evidence was sufficient to find that defendant did not act in self-defense, and reversal is unwarranted.

Affirmed.

/s/ Kathleen Jansen
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood