

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER PIERRE SWOOPE,

Defendant-Appellant.

UNPUBLISHED

May 28, 2009

No. 282398

Wayne Circuit Court

LC No. 07-010309-FC

Before: Jansen, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant claims an appeal from his jury convictions of assault with intent to do great bodily harm less than murder, MCL 750.84, felonious assault, MCL 750.82, possession of a firearm during the commission of a felony, MCL 750.227b, and felon in possession of a firearm, MCL 750.224f.¹ Defendant was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of five to ten years for assault with intent to do great bodily harm less than murder, two to four years for felonious assault, and three to five years for felon in possession of a firearm, and to a consecutive two-year term for felony-firearm. In addition, defendant was ordered to reimburse the county \$600 for the cost of his court-appointed counsel. We affirm defendant's convictions, vacate that portion of the judgment requiring defendant to reimburse the county for the cost of his court appointed counsel, and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The police stopped defendant's vehicle for speeding. Defendant exited the vehicle and refused to comply with the officer's command to return to the vehicle. After a brief struggle with the officer, defendant entered his vehicle and fled the scene. The officer followed, and other officers joined the chase. The officer who stopped defendant and a sergeant who joined the pursuit testified that defendant fired a weapon. The sergeant testified that he and defendant were approximately five feet apart when defendant fired, and that he believed he was going to die. These incidents were alleged to have occurred a few minutes apart and in different locations.

¹ Defendant was also convicted of third-degree fleeing and eluding, MCL 257.602a(3), but that conviction is not at issue in this appeal. Additionally, defendant was acquitted of two counts of assault with intent to commit murder, MCL 750.83, one count of assault with intent to do great bodily harm less than murder, and one count of felonious assault.

Defendant was arrested at a hotel several days later. Defendant did not have a weapon on his person, and the police did not find a weapon in his room.

Defendant first argues that the evidence presented at trial was insufficient in that it did not establish that he possessed a firearm. We disagree.

When reviewing the sufficiency of the evidence in a criminal case, we must view the evidence de novo in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). We must draw all reasonable inferences and make credibility choices in support of the jury verdict, and must resolve all conflicts in the evidence in favor of the prosecution. *Id.* at 400; *People v Fletcher*, 260 Mich App 531, 562; 679 NW2d 127 (2004).

“It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.” *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Questions of credibility and intent should be left to the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Because proving an actor’s state of mind is difficult, minimal circumstantial evidence is sufficient. *People v McGhee*, 268 Mich App 600, 623; 709 NW2d 595 (2006).

The elements of assault with intent to commit great bodily harm less than murder are: (1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) intent to do great bodily harm less than murder. MCL 750.84; *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997).

We find that the prosecution presented sufficient evidence at trial to prove to a rational juror beyond a reasonable doubt that defendant committed an assault with intent to do great bodily harm less than murder and that defendant possessed a firearm. The jury was entitled to accept or reject the testimony from the sergeant to the effect that defendant fired at him from close range and the testimony from the other officer that defendant fired at him from a distance. *Avant, supra* at 506. Moreover, the jury was entitled to infer that by pointing the gun at the sergeant and firing from a distance of five feet, defendant was attempting to and intended to do great bodily harm to the sergeant. *McGhee, supra* at 623.

The jury also found defendant guilty of felonious assault, possessing a firearm during the commission of a felony, and being a felon in possession of a firearm. The only issue relevant to these convictions is whether defendant possessed a firearm. As stated above, both officers testified that defendant possessed and fired a gun. The jury was entitled to accept this testimony as credible. *Avant, supra* at 506.

We conclude that the evidence produced at trial was sufficient to support defendant’s convictions of assault with intent to commit great bodily harm less than murder, felonious assault, possessing a firearm during the commission of felony, and being a felon in possession of a firearm. We affirm defendant’s convictions.

Defendant also argues that the trial court erred when it ordered him to reimburse the county for the cost of his appointed counsel without considering his ability to pay at present or in the future. We agree.

A defendant who was appointed counsel may be ordered to reimburse the county for the costs of that representation if reimbursement will not cause defendant substantial hardship. A trial court need not make specific findings on the record regarding a defendant's ability to pay, but it must indicate that it considered the defendant's financial situation before ordering reimbursement. The amount must be related to the defendant's present and future ability to pay. *People v Trapp (On Remand)*, 280 Mich App 598, 600-601; 760 NW2d 791 (2008), citing *People v Dunbar*, 264 Mich App 240; 690 NW2d 476; MCR 6.005(B). If the trial court determines after a trial that a defendant is guilty, the court may impose the expenses of providing legal assistance to the defendant. MCL 769.1k(1)(b)(iii). But this statute does not eliminate the requirement that the trial court consider a defendant's ability to pay before ordering reimbursement of appointed counsel costs. *Trapp, supra* at 601.

At sentencing, the trial court ordered that defendant pay for his court appointed trial counsel. The trial court stated:

In regard to or in addition to the period of incarceration that you are to spend, you have to pay a \$60 state fee, \$60 crime victim's assessment fee. I'm not imposing any costs concerning this case because you will [be] in the Michigan Department of Corrections' custody for an extended period of time. You do have to pay attorney's fees in the amount of \$600.

Defendant failed to object to this order; therefore, our review is for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). The record gives no indication the trial court considered defendant's ability to pay before ordering reimbursement of attorney fees. Consequently, a remand for further proceedings is necessary. *Trapp (On Remand), supra* at 601.

We vacate that portion of the judgment of sentence requiring defendant to pay \$600 for the cost of his court appointed trial counsel and remand this matter for consideration of defendant's present and future ability to reimburse the county for the cost of his representation. On remand, an evidentiary hearing is not required. The trial court may rely on an updated report from the probation department. *Id.* If the trial court decides to eliminate or change the amount of reimbursement, it may enter an amended judgment of sentence.

We affirm defendant's convictions but vacate that portion of the judgment of sentence requiring defendant to reimburse the county for the cost of his court appointed counsel and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Jane E. Markey