STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 11, 2009
v	No. 283572 Oakland Circuit Court
JEREL JUNIOR HODGES, Defendant-Appellant.	LC No. 2007-217182-FH

Before: Wilder, P.J., and Meter and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right from his jury conviction of assault with intent to murder, MCL 750.83.[1] We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole argument on appeal is that the evidence presented at trial was insufficient to convict him. Specifically, he argues that the prosecution failed to establish that he possessed the required intent to murder the victim. We disagree.

The victim approached defendant at a party store and asked to buy drugs. The victim had known defendant for several months and had purchased cocaine from him in the past. When defendant declined to sell the victim drugs, a verbal altercation ensued. Defendant left the store, the victim followed him, and defendant then unknowingly made a sale of drugs to an undercover police officer. The victim then made a second request to buy drugs from defendant. Defendant again refused the request, and the victim started walking toward defendant. The victim testified that when he was within 15 feet of defendant, defendant turned around, pulled out a gun, pointed it at him, and fired. Defendant testified that he was afraid that the victim was going to attack

[1] Defendant was also convicted of two counts of delivery/manufacture of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); four counts of possession of a firearm during the commission of a felony, second offense, MCL 750.227b; third-degree fleeing and eluding, MCL 257.602a(3); and carrying a concealed weapon, MCL 750.227. Defendant does not challenge these convictions on appeal. Defendant was sentenced as a third-offense habitual offender, MCL 769.11.

him, and that to prevent this, he pulled out his gun, pointed it in the general direction of the victim, and shot "nearby" the victim.

After the shooting, defendant drove away from the scene. An undercover officer followed defendant and saw a black object fly out of defendant's vehicle. The officer stopped and recovered a .38 caliber revolver that contained two spent casings and three live rounds. Eventually, defendant was apprehended. A police officer testified that he found .38 caliber ammunition in defendant's vehicle.

In a criminal case, due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999). We must view the evidence in the light most favorable to the prosecution, *id*. at 723, resolving conflicts in the evidence in favor of the prosecution, *People v Fletcher*, 260 Mich App 531, 562-564; 679 NW2d 127 (2004).

"It is for the trier of fact, not the appellate court, to determine what inferences may fairly be 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); *People v Queenan*, 158 Mich App 38, 55; 404 NW2d 693 (1987), abrogation on other grounds recognized in *People v Russo*, 439 Mich 584; 487 NW2d 698 (1992). 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 murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Lawton*, 196 Mich App 341, 350; 492 NW2d 810 (1992).

We find that the prosecution presented sufficient evidence at trial to prove to a rational jury beyond a reasonable doubt that defendant committed an assault with intent to commit murder. Viewing the evidence in the light most favorable to the prosecution, *Johnson*, *supra* at 723, and resolving conflicts in the prosecution's favor, *Fletcher*, *supra* at 562-564, we have the following facts: defendant and the victim were arguing, defendant pulled out a gun when the victim approached to within 15 feet, and defendant pointed the gun at the victim and fired two shots. Following the shooting, defendant fled and discarded the gun.

The jury could have inferred that defendant, by pointing the gun either at or in the direction of the victim, was aiming the gun at the victim. This is a reasonable inference, even though defendant testified that he aimed only "nearby" the victim. Questions of credibility and intent are to be resolved by the trier of fact. *Avant*, *supra* at 506; *Qeenan*, *supra* at 55. The jury could have inferred that defendant, by firing the gun twice while aiming at the victim, was actually trying to shoot the victim and not, as defendant maintained, trying only to frighten the victim. The jury could have inferred also that defendant, by aiming a gun at the victim and shooting at him twice, intended to kill him.

Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of assault with intent to commit murder. *People v Warren*, 200 Mich App 586, 588; 504 NW2d 907 (1993). The only issue presented in this appeal

is whether the evidence presented at trial was sufficient for a rational jury to find beyond a reasonable doubt that defendant possessed the intent to kill the victim. For the reasons stated, we find that the evidence adduced at trial was sufficient for the jury to find defendant guilty beyond a reasonable doubt of assault with intent to murder.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Deborah A. Servitto