

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LEE RICHARDS,

Defendant-Appellant.

UNPUBLISHED

May 18, 2010

No. 290514

Wayne Circuit Court

LC No. 08-005402-FC

Before: METER, P.J., and MURRAY and BECKERING, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of assault with intent to murder (assault/murder), MCL 750.83, assault with intent to commit great bodily harm less than murder (assault/GBH), MCL 750.84, first-degree home invasion, MCL 750.110a(2), felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to concurrent prison terms of 12 to 20 years for the assault/murder conviction, six to ten years for the assault/GBH conviction, ten to 20 years for the first-degree home invasion conviction, and two to four years for the felonious assault conviction. Defendant was also sentenced to two years' consecutive imprisonment for the felony-firearm conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case arises out of an incident wherein defendant arrived at the home of the victim—his former girlfriend—and her two teenage children in the early morning hours of April 4, 2008. The victim awoke to find defendant pacing in her bedroom. Defendant locked the bedroom door, turned on the lights, pointed a 12-gauge single shot shotgun at the victim's head and pulled the trigger. The gun did not fire, and defendant pulled the trigger three more times. He then opened the gun, looked inside, and removed and replaced the shotgun shell, whereafter the shell fell out of the gun and went underneath the bed. As the victim tried to escape, defendant struck her in the back of the head five times with the gun. The victim fled the bedroom, and defendant struck the victim's daughter in the face after she indicated she had called the police. After the victim locked herself in the bathroom, defendant knocked down the bathroom door. While the victim's children distracted defendant, the victim went downstairs. Defendant pursued the victim and used a wooden piece of the shotgun to strike her in the left temple.¹ Ultimately, the

¹ The witnesses have different memories regarding how the shotgun came to be in pieces. The
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victim was able to leave the home and seek medical treatment. She was treated at the hospital for a five-centimeter laceration on the back of her head, a laceration on her face, and a bone fracture in her orbital area.

As his sole issue on appeal, defendant claims the prosecution failed to prove beyond a reasonable doubt that he intended to kill the victim to support the conviction of assault with intent to commit murder. We disagree.

This Court reviews a claim of insufficient evidence de novo, *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002), “view[ing] the evidence in a light most favorable to the prosecution and determin[ing] 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).

“The elements of the crime 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 Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993). An assault is committed by “either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery.” *People v Starks*, 473 Mich 227, 234; 701 NW2d 136 (2005).

Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. The intent to kill may be proved by inference from any facts in evidence. Because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient. All conflicts in the evidence must be resolved in favor of the prosecution. [*People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999) (citations omitted).]

Viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found that the essential elements of the crime of assault with intent to commit murder were proven beyond a reasonable doubt. *Wolfe*, 440 Mich at 515. Defendant pointed a shotgun at the victim and pulled the trigger four times, although the weapon failed to discharge. This behavior constituted an assault because it was an attempt to commit a battery. *Starks*, 473 Mich at 234. When the gun failed to discharge, defendant opened it up, removed the shotgun shell, and attempted to re-insert the shell. Defendant’s attempt to fire the gun and his efforts to determine why it did not fire and to rectify the condition demonstrated his intent to commit murder. Additionally, the evidence established that defendant and the victim had an intimate relationship before the incident; she had recently broken up with him; he made persistent efforts to convince her to get back together; he had purchased the shotgun shells two days before appearing at her house; he broke into her house early in the morning; and he loaded the shotgun and attempted to discharge it four times while it was pointed at her head. Finally, as the trial

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victim’s daughter testified that the gun broke when defendant used it to strike the victim in the face.

court noted, if defendant's attempted assault had been successful, it would have surely resulted in the victim's death.

Affirmed.

/s/ Patrick M. Meter

/s/ Christopher M. Murray

/s/ Jane M. Beckering