STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

JOSEPH K. JONES,

Defendant-Appellant.

UNPUBLISHED
December 18, 2001

No. 226746
LC No. 99-007612

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

EARL L. JONES,

Defendant-Appellant.

No. 226747
LC No. 99-007612

Before: Cooper, P.J., and Cavanagh and Markey, JJ.

PER CURIAM.

Defendant Joseph K. Jones was convicted of arson of a dwelling house, MCL 750.72, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to five to twenty years' imprisonment for the arson conviction and a consecutive two-year term for the felony-firearm conviction. Defendant Earl L. Jones was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84, arson of a dwelling house, MCL 750.72, discharging a firearm at a dwelling, MCL 750.234b, and two counts of felony firearm. He was sentenced to concurrent prison terms of fifty-seven to 120 months' for the assault conviction, eight to twenty years' for the arson conviction, and twenty-three to forty-eight months' for the discharge of a firearm conviction, to be served consecutively to two concurrent two-year terms for the felony-firearm convictions. Defendants appeal by right.

In Docket No. 226746, defendant Joseph K. Jones argues that he was improperly assessed twenty-five points for offense variable one of the sentencing guidelines. We disagree. Because this was a multiple offender case and a codefendant was assessed twenty-five points, the court

was required to assess the same number of points for defendant Joseph K. Jones. MCL 777.31(2)(b).

In Docket No. 226747, Earl L. Jones argues that the evidence at the preliminary examination was insufficient to bind him over on the higher charge of assault with intent to commit murder and that the evidence at trial was similarly insufficient to submit that charge to the jury. He argues that his conviction on the lesser offense of assault with intent to commit great bodily harm less than murder was therefore the product of an improper compromise verdict. We disagree.

The evidence adduced at the preliminary examination and during trial was sufficient to enable a factfinder to infer that defendant intended to kill. Defendant argues that he merely shot into a building, but much more happened. The evidence revealed that defendant and his accomplices pushed and threatened a family of eleven into a house. They then shot through the windows and into the first and second floor walls. A shotgun blast ripped through the front door while the homeowner was behind it. All this time, defendant and his accomplices were aware that people were trapped in the house.

During a break in the shooting, the occupants secretly escaped. Thinking the victims were still in the house, defendant and the others surrounded the home and firebombed it. When they realized the occupants were not coming out, they did not attempt to rescue them or minimize damage. Instead, even when the fire department arrived, the group wanted the house to continue burning.

Viewed in a light most favorable to the prosecution, this evidence was sufficient to allow a rational trier of fact to infer an intent to kill beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). See also *People v Nowack*, 462 Mich 392; 614 NW2d 78 (2000); *People v Mills*, 450 Mich 61; 537 NW2d 909 (1995), modified on other grounds 450 Mich 1212 (1995); *People v Barclay*, 208 Mich App 670; 528 NW2d 842 (1995); *People v Smith*, 89 Mich App 478; 280 NW2d 862 (1979), cert den 452 US 914; 101 S Ct 3047; 69 L Ed 2d 417 (1981).

We affirm both of these cases.

/s/ Jessica R. Cooper
/s/ Mark J. Cavanagh
/s/ Jane E. Markey