

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROOSEVELT B. PRESCOTT,

Defendant-Appellant.

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UNPUBLISHED

February 8, 2002

No. 224959

Wayne Circuit Court

LC No. 99-007047

Before: Cavanagh, P.J., and Neff and B. B. MacKenzie\*, JJ.

PER CURIAM.

In a bench trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84, assault with a dangerous weapon without intent to inflict great bodily harm (felonious assault), MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to concurrent terms of imprisonment of five to ten years for assault with intent to do great bodily harm, and two to four years for assault with a dangerous weapon, with 147 days' jail credit applied to both. The trial court additionally sentenced defendant to a consecutive term of imprisonment of two years for felony-firearm. Defendant appeals as of right. We affirm.

Defendant challenges the sufficiency of the evidence to support both assault convictions. When reviewing the sufficiency of evidence in a criminal case, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the elements of the crime were proved beyond a reasonable doubt. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

Assault with intent to do great bodily harm less than murder requires proof of an assault of another coupled with the specific intent to do great bodily harm less than murder. *People v Bailey*, 451 Mich 657, 668-669; 549 NW2d 325 (1996), amended on other grounds 453 Mich 1204 (1996). Defendant challenges the sufficiency of the evidence of his intent.

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

An actor's intent may be inferred from all of the facts and circumstances, and given the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient. *Fetterley, supra* at 517-518. In this case, it is uncontroverted that defendant shot, from the top of the stairs, down toward the victim at the bottom of the stairs. Defendant insists that under the circumstances had he intended the bullet to strike the victim, he could easily have achieved that result—the implication being that defendant missed his victim because he never intended to hit her. An equally plausible interpretation of this evidence is that defendant intended to shoot the victim, and missed by only a little. We note that defendant shot in the victim's general direction, as opposed to at the ceiling or near his own feet. Given the evidence that defendant, while in a state of obvious rage, shot downward toward the victim once and then hastily left the scene, and in fact missed her only by a small margin, the trial court could reasonably have concluded that defendant shot with the intent to hit his victim.

The elements of assault with a dangerous weapon are an assault, with a dangerous weapon, and with the intent to injure or place the victim in reasonable fear or apprehension of an immediate battery. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992). Concerning the sufficiency of the evidence of the assault on a felonious assault victim, defendant's entire argument consists of pointing to the testimony of one witness that did not harmonize perfectly with that of the complaining witnesses. The testimony of the felonious assault victim that defendant twice struck her on the face with his gun, and of the other complaining witness that she saw the felonious assault victim with blood running down her face, was more than adequate to support the trial court's conclusion in this regard.

Defendant also argues that his sentence for assault with intent to do great bodily harm less than murder is not proportional to the offense and offender. We disagree. Because the conduct for which defendant was convicted occurred after January 1, 1999, the legislative sentencing guidelines apply. MCL 769.34. Defendant's sixty-month minimum sentence fell within the guidelines' range of thirty-four to sixty-seven months and the scope of our review is limited. MCL 769.34(10); *People v Babcock*, 244 Mich App 64, 73-75; 624 NW2d 479 (2000). Nothing in defendant's argument of this issue persuades us that his sentence is not proportionate or is otherwise subject to review.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Janet T. Neff  
/s/ Barbara B. MacKenzie