

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD C. HENRY,

Defendant-Appellant.

UNPUBLISHED
December 2, 2003

No. 241437
Wayne Circuit Court
LC No. 01-003238-01

Before: Murray, P.J., and Gage and Kelly, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of attempted felonious assault, MCL 750.82 and 750.92, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to a term of one month to two years' imprisonment for the attempt conviction and a consecutive mandatory two-year term for the felony-firearm conviction. Defendant appeals as of right.

The testimony established that at approximately 8:00 p.m. on February 14, 2001, defendant came out onto his porch carrying a long barreled shotgun when a patrol car went by. The officer testified that defendant looked her way, raised and shouldered the weapon, and aimed it at the car. The officer accelerated and heard a shot.

Defendant asserts that the trial court must have believed that the gun was pointed at the car and not at the officer, and that the evidence was insufficient to establish an assault on *another person* with a gun, which defendant identifies as an element of assault with a deadly weapon. However, defendant was charged with assault with intent to murder and was found guilty of attempted felonious assault. Thus, defendant's conviction must be upheld if the evidence was sufficient to support attempted felonious assault.

Attempted felonious assault requires an affirmative act toward attempting a battery or toward some action that places another in reasonable apprehension of a battery. *People v Jones*, 443 Mich 88; 504 NW2d 158 (1993). In *Jones*, the defendant attempted to strike the arresting officer with a pair of scissors but the officer stopped him. He was charged with felonious assault but convicted of attempted felonious assault. In upholding the conviction, the Supreme Court held:

[W]e see no logical impediment to a conviction for attempted felonious assault where the accused intends, while armed with a dangerous weapon, to cause another to reasonably fear an immediate battery. [*Jones, supra* at 108.]

The evidence established that while armed with a long barreled shotgun, defendant aimed it in the direction of the patrol car and fired, missing the car. This evidence was sufficient to establish that his intent was to cause the officer to fear an immediate battery.

Affirmed.

/s/ Christopher M. Murray

/s/ Hilda R. Gage

/s/ Kirsten Frank Kelly