

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMARINA JOHNSON,

Defendant-Appellant.

UNPUBLISHED

December 12, 2006

No. 264829

Wayne Circuit Court

LC No. 04-009662-01

Before: Owens, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Defendant was convicted of assault with intent to murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. She was sentenced to two years' imprisonment for the felony-firearm conviction and 81 to 135 months' imprisonment for the assault with intent to murder conviction, to be served consecutively. She appeals as of right, and we affirm.

Defendant first argues that there was insufficient evidence to convict her of assault with intent to murder. We disagree. This Court reviews a claim of insufficient evidence de novo, viewing the evidence in the light most favorable to the prosecutor, to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005).

Assault with intent to murder requires a showing of an assault, with an actual intent to kill, which, if successful, would make the killing murder. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Circumstantial evidence and reasonable inferences that arise therefrom can constitute satisfactory proof of the elements of the crime, including intent. *Id.*

Defendant first argues that the prosecution failed to show intent. Defendant testified that she did not intend to murder Sunnetta Mack, and wanted only to stop Mack from ramming her vehicle. However, the prosecution presented evidence that defendant threatened Mack's life prior to this shooting, defendant rammed Mack's car, trying to push her into oncoming traffic, and defendant fired several shots on two separate occasions at Mack's car, knowing that Mack, her friend Nicola Wilcoxson, and five children were riding in it. One of the bullets fired resulted in injury to Mack's son. Another bullet went through Mack's headrest. Taken together, the prosecution's evidence was sufficient to prove defendant's intent to kill Mack.

Defendant also argues that the prosecution failed to disprove her claim of self-defense. When self-defense involves the use of deadly force, the defendant must honestly and reasonably believe that his or her life is in imminent danger or that there is a threat of serious bodily injury, *People v Fortson*, 202 Mich App 13, 19-20; 507 NW2d 763 (1993), and that deadly force is necessary, *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002). “Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt.” *Fortson*, *supra* at 20.

Defendant claimed she shot at Mack because she was afraid Mack would ram her car, but defendant admitted she shot at Mack as Mack was driving away from her, after any apparent danger had already passed. Thus, the trial court was free to reject the claim that defendant acted in self-defense.

Defendant next argues that she is entitled to resentencing because, under *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), the trial court could not increase her minimum sentence using facts found by only a preponderance of the evidence. We disagree. The Michigan Supreme Court has held that *Blakely* does not apply to Michigan’s indeterminate sentencing scheme. *People v Drohan*, 475 Mich 140, 159-160; 715 NW2d 778 (2006), citing *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004). In Michigan, a fact can be established for the purpose of guidelines calculations even though it was not established at trial beyond a reasonable doubt. See e.g., *People v Perez*, 255 Mich App 703, 712; 662 NW2d 446, vacated in part on other grounds 469 Mich 415; 670 NW2d 655 (2003); *People v Coulter*, 205 Mich App 453, 456; 517 NW2d 827 (1994).

Affirmed.

/s/ Donald S. Owens
/s/ Helene N. White
/s/ Joel P. Hoekstra