STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 5, 2008
v	No. 276003 Calhoun Circuit Court
JEROME DEQUAN SHIPP, Defendant-Appellant.	LC No. 2006-003356-FC

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of assault with intent to commit murder, MCL 750.83, carrying a concealed weapon (CCW), MCL 750.227, discharging a firearm at a building, MCL 750.234b, and two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Dawan Gordon became involved in a physical altercation with Jervon Ward. While the two fought, defendant moved behind Gordon, raised a pistol and fired two shots at Gordon's back. The first shot went through Gordon's coat. However, the bullet from the second shot, which Gordon testified occurred approximately four seconds later, struck Gordon in the area of his lower rib cage on the right side of his back. The bullet passed near Gordon's spine, permanently paralyzing his legs, and the remainder of the bullet lodged in his abdominal cavity. Gordon testified that, as he collapsed on a nearby table, he turned to see defendant pointing the gun at him. Gordon spoke to the defendant, but then "played dead" when defendant continued to aim the weapon at him. Defendant left the house. While Gordon lay on the floor, Ward stomped on him, and then left.

Defendant first argues that the prosecution failed to present sufficient evidence that he actually intended to kill Gordon, and thus failed to present sufficient evidence of the crime of assault with intent to commit murder. We disagree.

We review a defendant's allegations of insufficiency of the evidence de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Id*. However, we will not interfere with the jury's role of determining the weight of the evidence or the credibility of

the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1202 (1992). Satisfactory proof of the elements of the crime can be shown by circumstantial evidence and reasonable inferences arising therefrom. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). It is for the trier of fact to determine what inferences can fairly be drawn from the evidence and the weight to be accorded to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Assault with intent to commit murder is a specific intent crime that requires "(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005). "An assault may be established by showing 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). As with all elements of an offense, the intent to kill can be reasonably inferred from any facts in the evidence, including circumstantial evidence. *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993). Moreover, because of the difficulty of proving a person's state of mind, even minimal circumstantial evidence is sufficient. *People v McRunels*, 237 Mich App 168, 181; 603 NW 2d 95 (1999).

We conclude that the prosecution presented sufficient evidence of defendant's intent to kill. Witnesses testified that defendant aimed two shots at the victim's torso, an area of the body containing vital organs. This evidence supports the finding of an intent to kill. *People v Miller*, 91 Mich 639, 644; 52 NW 65 (1892). See also *People v Kvam*, 160 Mich App 189, 193-194; 408 NW2d 71 (1987). Additionally, the fact that defendant shot at Gordon multiple times at close range, after aiming between shots, indicates a determined effort by defendant to kill Gordon. Further supporting this conclusion is Gordon's testimony that defendant left only after Gordon pretended to be dead. Had Gordon not survived the assault, defendant would have committed murder. The prosecution was not required to disprove any other theory, such as defendant's claim that he fired at Gordon "in an attempt to stop the fight from escalating further." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The prosecution presented sufficient evidence to support the conviction for assault with intent to commit murder.

Defendant, who was sentenced as a second habitual offender, MCL 769.10, argues that he is entitled to have his habitual offender conviction vacated because the sentence enhancement was improperly based on a misdemeanor conviction. We disagree.

We review questions of statutory construction de novo. *People v Hill*, 257 Mich App 126, 144; 667 NW2d 78 (2003).

At sentencing, defendant objected to the use of a prior conviction for attempted resisting and obstructing a police officer, MCL 750.81d(1), which was in fact a misdemeanor, with a one-year maximum sentence. See MCL 750.92(3). However, MCL 769.10 provides in relevant part:

> (1) If a person has been convicted of a felony or *an attempt to commit a felony*, whether the conviction occurred in this state or would have been for a felony or attempt to commit a felony in this state if obtained in this state, and that person commits a subsequent felony within this state, the person shall be punished upon

conviction of the subsequent felony and sentencing under section 13 of this chapter as follows: [Emphasis added.]

This Court has consistently held that a conviction for an attempt to commit a felony supports a supplemental information, even if that conviction constitutes a misdemeanor offense. See *People v Slocum*, 156 Mich App 198, 200-201; 401 NW2d 271 (1986), *People v Davis*, 89 Mich App 588, 594, 595-596; 280 NW2d 604 (1979). A plain reading of the statute supports this analysis. Defendant was convicted of "an attempt to commit a felony" and thus the trial court did not err when it considered defendant's prior conviction in calculating defendant's sentence.

Affirmed.

/s/ Richard A. Bandstra
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto