

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAPHAEL DARNELL MOORE,

Defendant-Appellant.

UNPUBLISHED

June 30, 2011

No. 297428

Oakland Circuit Court

LC No. 2009-228689-FC

Before: FITZGERALD, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of three counts of assault with intent to commit murder, MCL 750.83, and three counts of possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to concurrent prison terms of 345 months to 60 years for each assault count, to be served consecutive to concurrent prison terms of two years for each felony-firearm count. We affirm.

Defendant argues that there was insufficient evidence to support his convictions for assault with intent to commit murder. We disagree.

Sufficiency of the evidence is reviewed de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). “[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of the crime were proven beyond a reasonable doubt.” *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Assault with intent to commit murder has three elements: “(1) an assault, (2) with an actual intent to kill, and (3) which, if successful, would make the killing murder.” *People v Lawton*, 196 Mich App 341, 350; 492 NW2d 810 (1992); MCL 750.83.

Viewed in the light most favorable to the prosecution, the evidence was sufficient to support the finding, beyond a reasonable doubt, that defendant committed an assault. Defendant undisputedly shot three men, five times, from ten to 20 feet away. “The intentional discharge of a firearm at someone within range is an assault.” *People v Johnson*, 54 Mich App 303, 304; 220 NW2d 705 (1974).

The evidence was also sufficient to support the finding, beyond a reasonable doubt, that defendant intended to kill the victims. “An intent to kill may be inferred from conduct the natural tendency of which is to cause death or great bodily harm.” *People v Eisenberg*, 72 Mich App 106, 114; 249 NW2d 313 (1976). “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (citation omitted). “[M]inimal circumstantial evidence will suffice to establish the defendant’s state of mind, which can be inferred from all the evidence presented.” *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). Intent to kill can be inferred from the facts in evidence, *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999), including a defendant’s conduct and the circumstances surrounding the killing, see *Carines*, 460 Mich at 757. Firing a gun at a person within range can support an inference of intent to kill. See *People v Carrier*, 74 Mich App 161, 167; 254 NW2d 35 (1977); *Johnson*, 54 Mich App at 304. Defendant’s actions supported a rational inference that he intended to kill the victims. He held a gun “straight out” from his chest, pointed it at the victims from relatively close range, fired five times, and every shot struck a victim. One victim was hit twice; once in the front center of his thigh and once in the hip area. Another victim was shot twice in the thigh, with one of the bullets hitting him just below the waist. The third victim was struck in the ankle. Although defendant argues, as his counsel did at trial, that he would have aimed at his victims’ upper bodies, rather than their lower bodies, had he intended to kill them, the evidence was sufficient to permit the jury to determine whether, when defendant repeatedly fired bullets into the bodies of his victims, he intended to kill them.

Finally, it is undisputed that had defendant killed the victims, he would have been guilty of murder.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Jane M. Beckering