

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
December 13, 2011

v

MICHAEL OWEN RUSSELL,
Defendant-Appellant.

No. 300211
Wayne Circuit Court
LC No. 09-026244-FC

Before: MURPHY, C.J., and JANSEN and OWENS, JJ.

PER CURIAM.

Defendant appeals by right his bench-trial convictions of two counts of assault with intent to do great bodily harm less than murder, MCL 750.84, and one count each of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and possession of a firearm by a felon (felon-in-possession), MCL 750.224f. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 12 to 25 years for each conviction of assault with intent to do great bodily harm less than murder and 5 to 15 years for the felon-in-possession conviction. He was also sentenced to a consecutive prison term of two years for the felony-firearm conviction. We affirm.

Defendant shot two individuals outside a nightclub in Detroit on May 8, 2009. One victim suffered a gunshot wound to the abdomen. The other victim sustained a gunshot wound to the neck. Both victims survived.

Defendant argues that although he may have acted with recklessness at the time of the shooting, the trial court never actually found that he possessed the specific intent to do great bodily harm. Therefore, he argues, the trial court's findings were inadequate and his convictions of assault with intent to do great bodily harm less than murder must be set aside. Defendant also suggests that the prosecution presented insufficient evidence to support his convictions of assault with intent to do great bodily harm less than murder. We cannot agree.

The trial court's findings of fact will be set aside only if they are clearly erroneous and the reviewing court is left with a definite and firm conviction that a mistake has been made. *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). We review de novo a challenge to the sufficiency of the evidence following a bench trial. *Id.*

MCR 6.403 states:

When trial by jury has been waived, the court with jurisdiction must proceed with the trial. The court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

Sufficient findings of fact are necessary in order to enable proper appellate review. *People v Armstrong*, 175 Mich App 181, 184; 437 NW2d 343 (1989). However, “brief, definite, and pertinent findings” are sufficient, and no “overelaboration of detail or particularization of facts” is necessary. MCR 2.517(A)(2); see also MCR 6.001(D). A remand for further fact finding is generally the proper remedy when the trial court has failed to set out sufficient findings of fact and conclusions of law. See *People v Jackson*, 390 Mich 621, 627 n 3; 212 NW2d 918 (1973). But a remand is not necessary when it appears that the trial judge, acting as the finder of fact, was aware of the factual issues in the case and correctly applied the law. *Armstrong*, 175 Mich App at 185.

The testimony in this case varied with regard to whether defendant was aiming his gun directly at the victims when he shot them or whether he was merely waving it in the air. This created a question of whether defendant actually intended to shoot the victims. The trial court found, “it’s . . . a little bit unclear about what the intent was.” Defendant essentially claims that, by making this statement, the trial court found that he had not acted with the specific intent to do great bodily harm. Defendant further asserts that by stating, “based on the nature of the injuries that occurred and the number of gunshots that were fired, it’s clear that the perpetrator did not care whether anyone was seriously injured or not and they actually were,” the trial court found that he had merely acted with recklessness, a state of mind that is inconsistent with the specific intent crimes of which he was convicted.

The trial court first concluded that there was no “intent to murder,” but then went on to discuss the circumstances of the shooting, the number of shots fired, and the nature of the victims’ injuries. The court found that “the bottom line is that the shooter was shooting in the direction of other people,” and that “assaults were meant to take place by the shooting of the gun” The trial court found credible that evidence which tended to establish that defendant had intended to, and did, shoot directly at the victims multiple times, and that the victims were seriously wounded as a result. This evidence supported the trial court’s inference that defendant intended to do great bodily harm.

Nor is there any reason to believe that the trial court misapplied or misapprehended the applicable law. “It is the intent with which the injury is inflicted that aggravates the assault, and brings it within the statutory definition of an assault with intent to do great bodily harm. It must be an intent to do a serious injury, of an aggravated nature.” *People v Howard*, 179 Mich 478, 488; 146 NW 315 (1914), quoting *People v Troy*, 96 Mich 530, 536-537; 56 NW 102 (1893). But a defendant need not have intended to inflict a precise injury, so long as he or she intended generally to cause serious bodily harm. *People v Miller*, 91 Mich 639, 643; 52 NW 65 (1892). The intent to shoot another person with a firearm “unquestionably manifests an intent to do great bodily harm.” *People v Montgomery*, 43 Mich App 205, 206-207; 204 NW2d 82 (1972). The trial court’s findings of fact and conclusions of law indicate that the court fully understood the element of specific intent as applied in this case, found sufficient credible evidence to establish

defendant's intent to do great bodily harm, and applied the correct legal standard. We conclude that the trial court's findings of fact and conclusions of law were adequate to support, and were not inconsistent with, defendant's convictions of assault with intent to do great bodily harm less than murder.

Defendant also suggests that there was insufficient evidence presented at trial to support the trial court's conclusion that he acted with the specific intent to do great bodily harm. We view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010). We give deference to the fact-finder's determinations concerning the credibility of the witnesses or the weight of the evidence. *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007).

The elements of assault with intent to do great bodily harm less than murder are: (1) an attempt or threat with force or violence to do corporal harm to another, i.e., an assault, and (2) a specific intent to do great bodily harm less than murder. *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005). Action must be done "purposefully" or "knowingly" to satisfy the element of specific intent. *People v Gould*, 225 Mich App 79, 85; 570 NW2d 140 (1997); see also *People v Lerma*, 66 Mich App 566, 569-570; 239 NW2d 424 (1976). Action that is merely reckless or negligent will typically justify a conviction of a general intent crime only. *Gould*, 225 Mich App at 85.

A defendant's specific intent may be inferred from his or her conduct or actions. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). For example, when a defendant shot at the victim twice at close range, with one bullet hitting the victim and the other bullet barely missing the victim's head, this Court held that the evidence allowed an inference of the defendant's intent to do great bodily harm. *Id.* Similarly, when a defendant shot at the victim from twenty yards away after threatening the victim and yelling obscenities, this Court held that the evidence was sufficient to support a finding of intent to do great bodily harm, despite the fact that the defendant's shots did not actually strike the victim. *People v Harrington*, 194 Mich App 424, 430; 487 NW2d 479 (1992).

We acknowledge that one of the witnesses testified at the preliminary examination that she was "not sure" whether defendant had actually aimed the gun at the two victims, and that the same witness had told the police that she never actually saw defendant "level" the gun at anyone. However, that witness later clarified at trial that defendant had pointed the gun at the two victims after waving it around in the air:

Q. Well, does [defendant] aim [the gun] at [the first victim]?

A. Yes. Towards the sidewalk. Yes.

Q. I'm sorry.

A. Towards the sidewalk where [the first victim] was standing.

Q. Does [defendant] aim it at [the second victim]?

A. Yes. She was standing on the sidewalk as well.

Q. And you're sure about that answer today, correct, ma'am?

A. Yes.

This testimony was sufficient to support the trial court's finding that defendant possessed the specific intent to do great bodily harm. See *Harrington*, 194 Mich App at 430; *Montgomery*, 43 Mich App at 206-207. The fact that the two victims were actually shot strongly supports an inference that defendant was pointing the gun at them. Moreover, the evidence established that defendant had been yelling obscenities at the group on the sidewalk just before he began shooting. See *Harrington*, 194 Mich App at 430. Defendant's behavior in this regard, coupled with the number of shots fired and the nature of the injuries sustained, sufficiently supported the trial court's finding beyond a reasonable doubt that defendant acted with the specific intent to do great bodily harm.

The trial court's findings of fact and conclusions of law were sufficient in this case and defendant's convictions of assault with intent to do great bodily harm less than murder were adequately supported by the evidence.

Affirmed.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Donald S. Owens