STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 17, 2013
v	No. 312483 Wayne Circuit Court
TIMOTHY THOMAS, Defendant-Appellant.	LC No. 12-002208-FC

Before: BOONSTRA, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of assault with intent to do great bodily harm less than murder, MCL 750.84, possession of a firearm during the commission of a felony, second offense, MCL 750.227b, and felon in possession of a firearm, MCL 750.224f. Because the evidence was sufficient to support defendant's convictions, and defendant waived his opportunity for an evidentiary hearing regarding the amount of restitution that the trial court ordered, we affirm.

Defendant's convictions stem from a shooting that occurred during an attempted drug transaction. According to Mark Atty and Yousef Hemana, they went to defendant's Detroit home to purchase Vicodin. An argument ensued, and defendant fired two gunshots toward Hemana, striking him once in his upper left leg. Hemana jumped through a window to escape, and a neighbor assisted him and called the police.

Defendant first argues that the prosecution presented insufficient evidence to support his convictions of assault with intent to do great bodily harm less than murder and felony-firearm. "This Court reviews de novo challenges to the sufficiency of the evidence to determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Lockett*, 295 Mich App 165, 180; 814 NW2d 295 (2012) (quotation marks and citation omitted). We resolve all conflicts regarding the evidence in the prosecution's favor. *Id*. "Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). "This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses." *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

In order to prove assault with intent to do great bodily harm less than murder, the prosecution must show: "(1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder." *People v Russell*, 297 Mich App 707, 721; 825 NW2d 623 (2012) (quotation marks and citation omitted). "An actor's intent may be inferred from all the facts and circumstances, and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *Id*. (quotation marks and citation omitted).

Defendant argues that the prosecution failed to present sufficient evidence to show that he had the requisite intent to commit assault with intent to do great bodily harm less than murder and that his actions were taken in self-defense. Reviewing the evidence in the light most favorable to the prosecution, the evidence was sufficient for a rational trier of fact to conclude that the essential elements of the offense were proven beyond a reasonable doubt. *Lockett*, 295 Mich App at 180. Defendant admitted that he fired two shots toward Hemana. One shot missed, and the other struck Hemana in the leg. Both Hemana and Atty testified that defendant ordered another man, "Marlow," to kill Hemana and Atty. According to Atty, defendant stated that he wanted to see Hemana bleed. Defendant's statements support a finding that he intended to cause great bodily harm to Hemana. This case is similar to *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1998), in which this Court determined that the defendant's act of firing two shots from close range at the victim was sufficient on its own to support a finding that the defendant possessed the intent to do great bodily harm to the victim. Here, defendant fired two shots toward Hemana from a weapon described as an "Uzi" or "Tech-9" at a distance of approximately four feet. A rational trier of fact could infer that defendant had the intent to do great bodily harm to Hemana based on defendant's conduct alone. See *id.*

Defendant's argument that Hemana's and Atty's testimony was not believable lacks merit. This Court will not interfere with the fact-finder's duty of determining witness credibility. *Kanaan*, 278 Mich App at 619. Defendant's argument that the evidence does not support his convictions because the jury acquitted him of armed robbery likewise lacks merit. The fact that the jury acquitted defendant of armed robbery did not require the conclusion that defendant did not intend to cause great bodily harm to Hemana. "[A] jury is free to believe or disbelieve, in whole or in part, any of the evidence presented." *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999). Although the jury may not have believed Hemana's and Atty's testimony that defendant robbed them of their belongings, it could have reasonably believed their testimony that pertained to the shooting itself. Although the trial court instructed the jury regarding self-defense, the jury apparently disbelieved defendant's testimony that he acted in self-defense after Hemana attacked him. The evidence supported the jury's finding that defendant did not act in self-defense when he shot Hemana. Further, because the evidence was sufficient to support defendant's assault with intent to do great bodily harm less than murder conviction, it was sufficient to support his accompanying felony-firearm conviction as well.

Defendant next argues that he is entitled to a restitution hearing because the trial court ordered him to pay $35,000 in restitution for Hemana's medical expenses without supporting evidence. The trial court relied on defendant's presentence investigation report ("PSIR"), which indicated that Hemana incurred $30,000 to $40,000 in medical expenses. Defense counsel questioned whether Hemana provided proof of his medical expenses and inquired whether Hemana actually paid the expenses. The trial court responded:

> I'm just telling you. It doesn't make any difference whether he paid it or not. He still has the bill. Just because someone hasn't physically paid a bill doesn't mean that that bill is nonexistence [sic]. It may force Mr. Hemana into bankruptcy. I mean if the medical institution with which he [was] treated insists upon that payment and Mr. Hemana says, well, you can't get blood from a turnip, I'm not going to pay you, I can't pay you, I don't have any money, well, then they'll go after his assets. That obligation is justifiably [defendant's]. Adios.

Defense counsel did not object to the restitution order and did not request a restitution hearing.

Defendant waived his opportunity for an evidentiary hearing regarding restitution by failing to request a hearing in the trial court. In *People v Gahan*, 456 Mich 264, 276; 571 NW2d 503 (1997), our Supreme Court stated:

> Although defendant did not receive such an evidentiary hearing, that does not give rise to error in this case because, as the Court of Appeals correctly noted below, at sentencing defendant did not request an evidentiary hearing regarding the amount of restitution that was properly due. This was a waiver of his opportunity for an evidentiary hearing . . . . [Footnote omitted.]

The Court further stated:

> It is incumbent on the defendant to make a proper objection and request an evidentiary hearing. Absent such objection, the court is not required to order, sua sponte, an evidentiary proceeding to determine the proper amount of restitution due. Instead, the court is entitled to rely on the amount recommended in the presentence investigation report which is presumed to be accurate unless the defendant effectively challenges the accuracy of the factual information. [*Id*. at 276 n 17 (quotation marks and citations omitted).]

In this case, defense counsel never requested an evidentiary hearing or effectively challenged the accuracy of the factual information in the PSIR on which the trial court relied. Therefore, defendant waived his opportunity for such a hearing. *Id*.

Affirmed.

/s/ Mark T. Boonstra
/s/ Pat M. Donofrio
/s/ Jane M. Beckering