

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRE MARTZ BOST,

Defendant-Appellant.

UNPUBLISHED
October 22, 1996

No. 181193
LC No. 94-005545

Before: Michael J. Kelly, P.J. and O'Connell and K.W. Schmidt,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.242(2). Defendant was sentenced to four to ten years' imprisonment for the assault conviction and the mandatory two-year prison term for the felony-firearm conviction. Defendant now appeals as of right, and we affirm.

Defendant asserts that the prosecution presented insufficient evidence to find him guilty beyond a reasonable doubt. We disagree. In reviewing the sufficiency of the evidence following a bench trial, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

There are two elements to the offense of assault with intent to commit great bodily harm (1) an attempt or offer with force or violence to do corporal harm to another; and, (2) an intent to do great bodily harm less than murder. *People v Bailey*, 207 Mich App 8, 9; 523 NW2d 798 (1994). No actual physical injury is required for the elements of the crime to be established. *People v Harrington*, 194 Mich App 424, 430; 487 NW2d 479 (1992).

After viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could find that the essential elements of the crime were established beyond a

* Circuit judge, sitting on the Court of Appeals by assignment.

reasonable doubt on the basis of the victims' testimony that, from a distance of approximately eight car lengths away, defendant pointed a handgun directly at the victim, fired at least five or six times, and was the only one doing the shooting. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985); *Hutner, supra*, 209 Mich App 282. Despite the victim's attempt to escape, defendant fired multiple shots at the fleeing vehicle, shooting out the rear windshield and a tail light. It can be inferred from this dangerous and violent conduct that defendant intended to inflict great bodily harm on the victim. *Mack, supra*, 112 Mich App 611.

In addition, defendant contends that the prosecution's witnesses were incredible and had ample motive for fabrication. However, upon review, this Court must give special deference to a trial court's findings regarding credibility of the witnesses. MCR 2.613(C). Credibility is a matter for the trier of fact to ascertain and is not to be resolved anew by this Court on appeal. *People v Vaughn*, 186 Mich App 376, 380; 295 NW2d 354 (1990).

Affirmed.

/s/ Michael J. Kelly

/s/ Peter D. O'Connell

/s/ Kenneth W. Schmidt