

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SAMMY B. JONES,

Defendant-Appellant.

UNPUBLISHED

December 3, 1996

No. 190115

LC No. 94-012986

Before: Fitzgerald, P.J., and Cavanagh and N.J. Lambros,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of two counts of assault with intent to commit murder, MCL 750.83; MSA 28.278, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to concurrent prison terms of six to fifteen years for the assault convictions, consecutive to a two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that insufficient evidence was presented to support his convictions for assault with intent to commit murder. We disagree. In determining whether evidence was sufficient to sustain a conviction, this Court, viewing the evidence presented in a light most favorable to the prosecution, must determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992); *People v Catanzarite*, 211 Mich App 573, 577; 536 NW2d 570 (1995).

A conviction for the crime of assault with intent to murder requires that the prosecution prove beyond a reasonable doubt: (1) an assault; (2) committed with the specific intent to murder, (3) which, if successful, would make the killing a murder. *People v Rockwell*, 188 Mich App 405, 411; 470 NW2d 673 (1991). Assault is defined as an attempted battery or any unlawful act which places another in reasonable apprehension of an imminent battery. *People v Johnson*, 407 Mich 196, 223; 284 NW2d 718 (1979). Circumstantial evidence and reasonable inferences drawn therefrom may

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

constitute satisfactory proof of the elements of a crime; and intent may be inferred from any facts in evidence. *People v Lawton*, 196 Mich App 341, 350; 492 NW2d 810 (1992).

Viewing the evidence presented in a light most favorable to the prosecution, a rationale trier of fact, drawing inferences from the facts in evidence, could have found that defendant committed an assault upon the victims by discharging his firearm at them multiple times. Moreover, the acts of shooting one victim in the abdomen and back, while wounding the other victim at the area of his skull, raise an inference that the assault was committed with the specific intent to murder. Finally, had the assaults resulted in death, that death would constitute murder. Therefore, the evidence presented at trial supports defendant's convictions for assault with intent to commit murder. *Rockwell, supra* at 411.

Defendant also argues that evidence was presented showing that the defense of self-defense was established, thus requiring reversal of defendant's convictions and sentences. We disagree. Self-defense is established where the defendant is under the honest and reasonable belief that he is in imminent danger of death or great bodily harm or that there was a threat of serious bodily harm. *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990); *People v George*, 213 Mich App 632, 634-635; 540 NW2d 487 (1995). Here, defendant contended that the victims were the initial aggressors in the assault at issue. However, viewing the evidence presented in a light most favorable to the prosecution, we find insufficient evidence to support the defense of self-defense. First, evidence was presented at trial showing that defendant presented himself in front of the residence immediately prior to the assault and discharged the firearm during the course thereof. Moreover, no evidence was presented at trial indicating that the victims attempted to force entry into the residence. Finally, defendant shot one victim in his back. This indicates that defendant continued to discharge his firearm while his victim was attempting to flee the scene. Viewed together, this evidence reasonably permits the inference that defendant was the initial aggressor, in possession of the only firearm at the scene of the assault and, therefore, defendant could not have honestly and reasonably believed himself to be in imminent danger of death or great bodily harm. *Heflin, supra* at 502; *George, supra* at 634-635.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Mark J. Cavanagh

/s/ Nicholas J. Lambros