STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS DIMITTRICK QUICK,

Defendant-Appellant.

UNPUBLISHED
December 6, 1996

No. 175415
LC No. 93-013836

Before: Reilly, P.J., and White, and P.D. Schaefer,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to seven to fifteen years for the assault conviction and two years for the felony-firearm conviction, the former sentence to run consecutive to the latter. Defendant now appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence to support his conviction of assault with intent to murder. We disagree. In reviewing a claim of insufficient evidence, we view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985); *People v Williams*, 212 Mich App 607, 608; 538 NW2d 89 (1995). The elements of the crime of assault with intent to murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Lugo*, 214 Mich App 699, 710; 542 NW2d 921 (1995). The intent to kill may be proven by inference from facts in evidence. *People v Barclay*, 208 Mich App 670, 674; 528 NW2d 842 (1995).

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

Taken in a light most favorable to the prosecution, the evidence revealed that defendant approached the complainant with a loaded shotgun, pointing in his direction, and asked a threatening question. Defendant then fired a single shot at the complainant's windshield and, within seconds, defendant shot the complainant in his back and in the back of his head. We conclude there was sufficient evidence to support defendant's conviction. While the small caliber of the shot is a relevant consideration, it does not compel a conclusion that defendant did not shoot with the requisite intent to kill.

Defendant next argues that the trial court's factual findings that defendant shot the complainant at close range and that defendant fired more than one shot were clearly erroneous. We disagree. The trial court's finding that defendant shot the complainant at close range was supported by the evidence presented. The stipulation at trial placed defendant and the complainant at close range while standing at the complainant's car. The complainant testified that he started to run away when, within seconds, defendant fired the gun, hitting the complainant in the back and the back of his head. Thus, the trial court's inference that defendant shot the complainant at close range was not improper. *People v Barclay*, 208 Mich App 670, 674; 528 NW2d 842 (1995). Further, the trial court's finding that defendant fired more than one shot at the complainant was supported by the evidence. An officer testified that he retrieved five shotgun shells from outside the complainant's car, the location where defendant was standing. Further testimony revealed that defendant did not fire any shots at the other two individuals present, that defendant may have fired one shot before the complainant got out of his car, and that defendant fired only one shot at the windshield, leaving three potential shells unaccounted for. Thus, the trial court permissibly inferred that defendant fired more than one shot at the complainant. *Barclay, supra,* 208 Mich App 674. A trial court's findings of fact will not be disturbed on appeal unless clearly erroneous. Our review of the record fails to leave us with a definite and firm conviction that a mistake has been made. MCR 2.613(C); *In re Forfeiture of $19,250*, 209 Mich App 20, 29; 530 NW2d 759 (1995).

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Helene N. White
/s/ Philip D. Schaefer