

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN DONTE LEWIS,

Defendant-Appellant.

UNPUBLISHED

October 28, 2003

No. 240852

Wayne Circuit Court

LC No. 01-009342-01

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from nonjury convictions of intentionally discharging a weapon in an occupied structure, MCL 750.234b(2), and possession of a firearm during the commission of a felony, MCL 750.227b, for which he was sentenced to prison terms of fourteen months to four years and two years, respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that the evidence was insufficient to prove his guilt beyond a reasonable doubt because such a conclusion could only be drawn by improperly drawing one inference from another rather than drawing each inference from an established fact. We disagree.

In *People v Atley*, 392 Mich 298, 315; 220 NW2d 465 (1974), the Court established the rule that inferences may be drawn from established facts, but one inference may not be drawn from another. However, in *People v Hardiman*, 466 Mich 417; 646 NW2d 158 (2002), the Court determined that "*Atley* is flawed and must be overruled" because it does not comport with the rules of evidence. *Id.* at 428. Specifically, the Court stated:

[W]hen reviewing sufficiency of the evidence claims, courts should view all the evidence – whether direct or circumstantial – in a light most favorable to the prosecution to determine whether the prosecution sustained its burden. It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. [*Id.*]

The crime of intentional discharge requires proof that (1) the defendant intentionally discharged a firearm, (2) the firearm was discharged in a facility, (3) the defendant knew or had

reason to believe that the facility was an occupied structure, and (4) the defendant discharged the weapon in reckless disregard for the safety of any individual. MCL 750.234b(2); CJI2d 11.26b. An “occupied structure” is defined as “a facility in which 1 or more individuals are present.” MCL 750.234b(5)(b).

The elements of felony-firearm are that the defendant possessed a firearm during the commission or attempted commission of any felony other than those four enumerated in the statute. MCL 750.227b(1); *People v Mitchell*, 456 Mich 693, 698; 575 NW2d 283 (1998); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Possession of a weapon may be actual or constructive and may be proved by circumstantial evidence. *People v Hill*, 433 Mich 464, 469-470; 446 NW2d 140 (1989).

The evidence showed that defendant, who was armed with a handgun, ran inside his friends’ house late at night. Given the hour and that defendant knew the people who lived in the house, defendant had reason to believe the house was an “occupied structure.” Within seconds after defendant entered, the officer pursuing defendant heard shots fired inside. Defendant admitted he had been in possession of a handgun and had hidden it inside the house. The gun was found where defendant had hidden it, as were a shell casing and a bullet hole. There was no evidence that another armed person was in the house who could have committed the crimes. The evidence at trial was sufficient to enable a rational trier of fact to infer beyond a reasonable doubt that defendant was the person who fired the weapon and thus that he was guilty of both offenses.

Affirmed.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello