

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
March 27, 2014

v

CARLOS DESHAWN HARVEY,  
  
Defendant-Appellant.

No. 311174  
Wayne Circuit Court  
LC No. 11-005844-FC

---

Before: M. J. KELLY, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of assault with intent to commit murder, MCL 750.83, discharging a firearm at a building, MCL 750.234b, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. We affirm.

Defendant and a man named Derrius were identified by shooting victim Jim Williams as the persons who shot at him multiple times at close range. Williams was struck five times. Williams knew defendant and Derrius, as well as some of their family members.

On appeal, defendant argues that there was insufficient evidence to support his convictions of assault with intent to murder and discharging a firearm at a building. We disagree.

This Court reviews sufficiency of the evidence issues de novo. *People v Ericksen*, 288 Mich App 192, 195-196; 793 NW2d 120 (2010). When reviewing the sufficiency of the evidence, this Court considers “the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt.” *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). “The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict,” and “[t]he scope of review is the same whether the evidence is direct or circumstantial.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

“The elements of assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder.” *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). MCL 750.234b(1) provides, in

pertinent part, that “an individual who intentionally discharges a firearm at a facility that he or she knows or has reason to believe is a dwelling or an occupied structure is guilty of a felony.”

First, defendant argues that there was insufficient evidence to prove that he was involved in the shooting. However, at trial Williams gave a detailed account of the shooting and identified defendant—someone he knew—as one of the shooters. Williams testified that he saw defendant and Derrius as he was leaving his friend’s house to pick up food and again at the restaurant where he went. He also testified that, before defendant and Derrius shot him, he watched them get into a car and then pull their car next to his car at which time defendant looked him directly in the face and then began shooting. Williams testified that he knew defendant and considered him family, meaning he was likely to recognize defendant on sight. Accordingly, there was sufficient evidence for the jury to find beyond a reasonable doubt that defendant shot Williams.

Second, defendant argues that there was insufficient evidence to establish that he acted with specific intent to kill, either as a principal or under an aiding-and-abetting theory. However, “[t]he intent to kill may be proved by inference from any facts in evidence,” and “[b]ecause of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient.” *McRunels*, 237 Mich App at 181. Further, “[c]ircumstantial evidence and the reasonable inferences that arise from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). As this Court stated in *People v Brown*, 267 Mich App 141; 703 NW2d 230 (2005):

The requisite intent may be gleaned from “the nature of the defendant’s acts constituting the assault; the temper or disposition of mind with which they were apparently performed, whether the instrument and means used were naturally adapted to produce death, his conduct and declarations prior to, at the time, and after the assault, and all other circumstances calculated to throw light upon the intention with which the assault was made.” [*Id.* at 149 n 5 (citations omitted).]

And aiding and abetting is demonstrated where

(1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that [the defendant] gave aid and encouragement. [*Carines*, 460 Mich at 768 (internal quotation marks and citation omitted); see also MCL 767.39.]

In this case, as discussed above, Williams testified that defendant and Derrius situated their car directly next to Williams’ car and then shot at him multiple times at close range, striking him five times. Police officers testified that they observed numerous bullet holes in Williams’ car, as well as broken glass at the location of the shooting. Further, 14 spent bullet casings were recovered from that location. A photograph admitted into evidence showed that a bullet hit the headrest on Williams’ seat. It is clear that the evidence was sufficient for the jury to find beyond a reasonable doubt that defendant, as a principal, acted with the intent to kill when he shot Williams. Further, the evidence was sufficient for the jury to find beyond a reasonable doubt

that defendant aided and abetted Derrius when Derrius assaulted Williams with the intent to murder him, that defendant assisted in the crime by shooting at Williams, and that defendant knew Derrius intended to kill Williams when he assisted in shooting at him.

Third, defendant argues that the evidence was insufficient to support his conviction for intentionally discharging a firearm at a dwelling. MCL 750.234b(1) provides, in pertinent part, that “an individual who intentionally discharges a firearm at a facility that he or she knows or has reason to believe is a dwelling or an occupied structure is guilty of a felony.” Defendant argues that, at most, the evidence showed that he only intended to shoot at Williams. However, in *People v Wilson*, 230 Mich App 590, 592-593; 585 NW2d 24 (1998), this Court noted that the plain meaning of the word “at,” under MCL 750.234b(1), means “to or toward the direction of.” Defendant concedes that the house in issue was located next to Williams’ parked car, and Williams testified at trial that defendant and Derrius shot the house while aiming at him as he drove around the corner on which the house was located. Williams also testified that defendant knew the person who lived in the house and had visited her house multiple times before the day of the shooting, thus showing that defendant knew or had reason to know that the house was occupied. Accordingly, there was sufficient evidence for the jury to find beyond a reasonable doubt that defendant intentionally discharged a firearm at a dwelling.

Finally, defendant argues that he was denied his right to effective assistance of counsel. He asserts that trial counsel was ineffective for failing to adequately investigate and present the alibi testimony of an identified witness. However, defendant acknowledged at trial that his attorney met with the witness. Defendant also attaches to his appeal brief an affidavit signed by the witness in which the witness states that he met with defendant’s trial counsel shortly after defendant was “locked up” and provided him with a verbal statement. Defendant fails to explain what additional steps his trial counsel should have taken to investigate the witness.

More significantly, defendant testified that he did not want the witness called as a witness. Defendant acknowledged that he was aware that counsel would call the witness to testify if that is what he wanted. Defense counsel cannot be deemed ineffective on appeal for taking an action directly sanctioned by defendant. See *Holmes v Holmes*, 281 Mich App 575, 587-588; 760 NW2d 300 (2008) (“A party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court.”) (internal quotation marks and citation omitted).

Affirmed.

/s/ Michael J. Kelly  
/s/ Mark J. Cavanagh  
/s/ Karen M. Fort Hood