

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAHLON GRANT,

Defendant-Appellant.

UNPUBLISHED

February 1, 2007

No. 265912

Wayne Circuit Court

LC No. 05-005596-01

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and unlawfully driving away a motor vehicle, MCL 750.413. Defendant received sentences of 1 ½ to 10 years in prison for the assault-with-intent conviction, and 6 months to 5 years in prison for the unlawfully driving away a motor vehicle conviction. He received a consecutive sentence of two years in prison for the felony-firearm conviction. Defendant appeals as of right and we affirm. This appeal is being decided without oral argument. MCR 7.214(E).

Defendant argues on appeal that there was insufficient evidence to support his convictions. We disagree. When reviewing claims of insufficient evidence, we review the record evidence in the light most favorable to the prosecutor to determine whether any rational trier of fact could have found that the essential elements of the crimes were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

The elements of assault with intent to do great bodily harm less than murder are: (1) an assault through an attempt or threat with force or violence to do corporal hurt to another with (2) a specific intent to do great bodily harm less than murder. *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005).¹ The offense is one of specific intent. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997).

¹ The offense of assault with intent to do great bodily harm less than murder is a necessarily included lesser offense of assault with intent to commit murder. *Brown, supra* at 150-151.

Durell Cunningham and his wife, Ophelia Cunningham, testified that on the morning in question, they awoke to find a portion of their backyard wooden fence torn down and Durell's motorcycle missing. Durell immediately suspected that defendant was responsible for his missing motorcycle given the facts that defendant had recently loaned money to Durell and was angry with him for not having paid it back, and that defendant had expressed interest in Durell's motorcycle some time earlier.² After realizing that his motorcycle was missing, Durell called defendant to question him. After that phone call, in which defendant neither admitted nor denied taking the motorcycle, defendant called the Cunningham residence and was "hollering and raving." A short while later, defendant arrived at the Cunningham residence and parked his car on the street alongside the curb in front of the residence. Defendant remained in his car and spoke through an open window to Durell, who stood approximately 20 to 25 feet away on the steps leading from his porch to his driveway. Defendant told Durell that he had the motorcycle. Defendant further stated that he owned the neighborhood and did not appreciate the way Ophelia had disrespected him on the telephone. Durell and Ophelia both testified that Durell asked defendant to leave, but that defendant pulled out a gun, held it out of the car window, and pointed it at Durell, stating that he would "pop" Durrell "right now." Defendant then fired a shot in Durell's direction.

In a prosecution for intent to do great bodily harm less than murder, an intent to harm the victim can be inferred from the defendant's conduct. *Parcha, supra* at 239. Angrily yelling threatening and disparaging remarks, coupled with shooting a handgun in the direction of the recipient of the remarks, is sufficient to prove the elements of assault with intent to do great bodily harm less than murder. See *id.*

Defendant contends that the testimony of Durell and Ophelia is not credible given that no physical evidence of a shooting was found at the scene. However, special deference is given to the jury's superior opportunity to evaluate the witnesses, and jury assessments regarding the weight and credibility of trial testimony will not be resolved anew on appeal. *Johnson, supra* at 731; *People v Lemmon*, 456 Mich 625, 646; 576 NW2d 129 (1998). Here, the jury evidently believed the testimony of Durell and Ophelia, as it was entitled to do. Although there was testimony that no gun, bullet or casing was found in the area of the shooting, a rational jury could still have found that a shooting occurred. An investigating officer testified that the casing discharged from the gun after it was fired could have landed inside defendant's car, and that the bullet could have landed blocks away. Additionally, Durell testified that he believed the bullet hit the house next door because he observed a small circle that appeared to be a bullet hole in one of his neighbor's bricks. Durell made a report to the police regarding the suspected bullet hole, but the matter was never investigated. In sum, according special deference to the jury's superior position to judge the credibility of the witnesses, and viewing all record evidence in the light most favorable to the prosecution, we conclude that a rational jury could have found that each element of assault with intent to do great bodily harm less than murder was proven beyond a reasonable doubt.

² Defendant had apparently asked Durell whether the motorcycle was for sale, and Durell apparently replied that it was not.

To prove the offense of felony-firearm, the prosecutor must establish the following elements: (1) the possession of a firearm (2) during the commission of, or the attempt to commit, a felony. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Assault with intent to do great bodily harm less than murder is a felony offense; therefore it can serve as the underlying felony for a felony-firearm conviction. MCL 750.84. Given the above discussion concerning the sufficiency of the evidence for the assault conviction, there was sufficient evidence to find that defendant committed felony-firearm as well. Both Durell and Ophelia testified that they saw defendant pull out a gun, point it at Durell, threaten to shoot Durell, and actually fire a shot in Durell's direction. Further, Durell described the gun with specificity to the investigating officers. Durell's and Ophelia's trial testimony was consistent with the statements they gave to police on the day of the shooting. On these facts, a rational jury could have found that the elements of felony-firearm were proven beyond a reasonable doubt.

The elements of unlawfully driving away a vehicle are: (1) possession of a vehicle, (2) driving the vehicle away, (3) that the act was done willfully, and (4) the possession and driving away were without authority or permission. MCL 750.413; *Landon v Titan Insurance Co*, 251 Mich App 633, 639-640; 651 NW2d 93 (2002). The offense requires an intent to take the vehicle unlawfully, but does not require an intent to steal the vehicle or to permanently deprive the owner of his property. *Id.* at 640. Any person who assists in or is a party to such taking possession, driving or taking away of any motor vehicle, belonging to another, is guilty of the offense. *Id.* at 639. A motorcycle is considered a motor vehicle for purposes of MCL 750.413. *People v Shipp*, 68 Mich App 452, 454-455; 243 NW2d 18 (1976).

A few weeks before the motorcycle was stolen from Durell's backyard, defendant expressed interest in the motorcycle and asked Durell whether it was for sale. Durell indicated that it was not for sale. Shortly after this exchange, defendant loaned Durell \$200. After Durell was unable to timely pay back defendant, defendant left Durell various voice messages and a threatening note asking for his money. Upon realizing that his motorcycle was missing, Durell immediately suspected defendant and called defendant to question him. Durell asked defendant why he took the motorcycle. Defendant answered, "How do you know I took your bike?" Durell then hung up the telephone. Soon thereafter, defendant called the Cunningham residence "hollering and raving." Later that same morning, defendant drove to the Cunninghams' house and told Durell that he had the motorcycle. Defendant allegedly told Durell that if he wanted the motorcycle back, he would have to see defendant. Durell's motorcycle was eventually recovered by police at the home of defendant's daughter. Taken together, and viewed in a light most favorable to the prosecution, this evidence suggests that defendant, at the very least, assisted in the taking or driving away of the motorcycle. As such, a rational jury could have found that the elements of unlawfully driving away a motor vehicle were satisfied beyond a reasonable doubt.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Jessica R. Cooper