

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SANTIAGO ESTABAN SMITH,

Defendant-Appellant.

UNPUBLISHED

June 16, 2005

No. 252551

Genesee Circuit Court

LC No. 03-012493-FC

Before: O’Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for assault with intent to commit murder, MCL 750.83, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony (felony firearm), MCL 750.227b. Defendant was sentenced to 285 months to 45 years in prison for the assault with intent to murder conviction, 2 to 5 years in prison for the carrying a concealed weapon conviction, and the mandatory 2 years in prison for the felony firearm conviction, to be served consecutively to each other. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arose when defendant shot at the victim from his car. Earlier that day, the victim and his friend were walking two dogs in front of defendant’s home. Defendant’s dog ran outside and the three dogs got into a fight. At trial, defendant admitted that he initiated a physical confrontation with the victim, during which the victim lost a lens from his glasses. Defendant then ran into his house and came back out with a sock or white towel wrapped around his hand. He pointed his covered hand “dead at” the victim and threatened to shoot and kill him. The victim believed that defendant was pointing a gun at him. Defendant’s next door neighbor testified that she saw defendant point a silver gun at the victim’s head and heard him threaten the victim. The victim and his friend took the dogs and walked away.

Later that evening the victim, his wife, his sister, and his friend returned to the area to look for the missing lens. The victim parked his van three houses down from defendant’s home. Not wanting to be seen by defendant because of the earlier threats, he remained by the van while his companions searched the area for the lens. When the victim saw defendant drive by, he told his companions, “Let’s go.” Before they could get to the van, defendant turned his vehicle around and pulled up next to the victim. The victim looked at defendant and said, “What?” Defendant shot him in the right side of the chest from about a foot away. The victim’s sister was

standing right next to the victim when defendant drove his vehicle close to them, fired the shot, and quickly drove off.

On appeal, defendant argues that the prosecutor failed to prove beyond a reasonable doubt that he had the actual intent to kill. “[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Under this deferential standard of review, “a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *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). A defendant’s intent can be established through the reasonable inferences that arise from circumstantial evidence. *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001).

Here, the evidence demonstrated defendant’s specific intent to kill the victim. Defendant had earlier pointed a gun at the victim and threatened to kill him. When he drove by and saw the victim standing next to his van, defendant deliberately turned his car around, drove back to where the victim was standing, and shot him in the chest at close range. These facts are sufficient to prove defendant’s intent to kill beyond a reasonable doubt.

Defendant also contends that the prosecutor did not disprove his claim of self-defense. We disagree. Although defendant testified that the victim pulled a gun on him, it is clear that the jury did not find defendant’s testimony credible. *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004). There was no evidence, other than defendant’s testimony, that the victim or any of the people with him had a gun. Rather, the evidence showed that when defendant spotted the victim, he deliberately turned his car around and drove up to him. This fact belies any claim that he feared he was in danger from the victim or sought to avoid any further conflict with him. Together with the testimony that defendant shot the victim without provocation, the evidence was sufficient to prove beyond a reasonable doubt that defendant did not act in self-defense.

Affirmed.

/s/ Peter D. O’Connell
/s/ Bill Schuette
/s/ Stephen L. Borrello