

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONTEZ DESHAWN ANDERSON,

Defendant-Appellant.

UNPUBLISHED

October 19, 2006

No. 263268

Wayne Circuit Court

LC No. 05-001646-01

Before: Murray, P.J., and O’Connell and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for assault with the intent to murder (“AWIM”), MCL 750.83, and possession of a firearm during the commission of a felony (“felony-firearm”), MCL 750.227b. Defendant was sentenced to 10 to 15 years’ imprisonment for the AWIM conviction, and two years’ imprisonment for the felony-firearm conviction. We affirm.

We disagree with defendant that the evidence presented at trial was insufficient to prove that defendant was the person who shot the victim, David Johnson (“Johnson”). Indeed, the trial court made specific credibility determinations before clearly articulating why it found beyond a reasonable doubt that defendant committed the acts.

An appeal from a bench trial claiming insufficient evidence is reviewed de novo. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000); *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005). All evidence is viewed in a light most favorable to the prosecution to determine whether the trial court could have determined that the elements of the crime were proven beyond a reasonable doubt. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). All determinations made by the trier of fact concerning the weight of evidence and credibility of witnesses should not, however, be disturbed. *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005).

AWIM is a specific intent crime that requires “(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder.” *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005) (citations omitted). “An assault may be established by showing either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery.” *People v Starks*, 473 Mich 227, 234; 701 NW2d 136 (2005). The intent to kill may be reasonably inferred from any facts in evidence,

People v McRunels, 237 Mich App 168, 181; 603 NW2d 95 (1999), including the use of a deadly weapon, *People v Carines*, 460 Mich 750, 759; 597 NW2d 130 (1999).

It is apparent that an assault occurred because Johnson suffered multiple gunshot wounds, which would establish a battery, and every battery includes an assault. *People v Vinson*, 105 Mich App 583, 589; 307 NW2d 100 (1981). The intent to kill can be inferred from the use of a gun during the assault, as well as the nature of Johnson's wounds, because the five to eight gunshot wounds were to his upper torso and potentially life threatening. Additionally, the fact that Johnson was shot multiple times indicates a determined effort by the assailant to kill Johnson. Had Johnson not survived the assault, the assailant would have committed murder. Thus, the elements of AWIM were proven beyond a reasonable doubt.

Defendant argues that the prosecution did not prove beyond a reasonable doubt that defendant was the assailant because Johnson's identification of defendant, by itself, was not credible. As previously noted, however, when reviewing the credibility of witnesses' testimony all determinations made by the trier of fact should not be disturbed. *Williams, supra* at 419. This Court has indicated that it will rarely overturn a conviction when the only issue is witness credibility. *People v Crump*, 216 Mich App 210, 215; 549 NW2d 36 (1996). Additionally, "positive identification by witnesses may be sufficient to support a conviction of a crime." *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

The trial court found Johnson's testimony to be credible and sufficient to find defendant guilty beyond a reasonable doubt. Johnson identified defendant on several different occasions – by first name immediately near the scene of the incident, by full name several weeks afterward, by photograph in a photographic lineup, and in court. Thus, the trial court's determination that Johnson's identification of defendant was credible will not be disturbed.

An analysis of the circumstances shows that the trial court had more than a reasonable basis to find Johnson's identification of defendant credible because Johnson knew defendant prior to the incident, viewed defendant from close proximity during the shooting, and provided the police, prosecutors and the trial court with a consistent identification of defendant as the perpetrator. The lack of any corroborating evidence is not dispositive because "positive identification by witnesses may be sufficient to support a conviction of a crime." *Davis, supra* at 700. There is no basis to find that Johnson's identification of defendant as the shooter is not credible or unreliable.

Affirmed.

/s/ Christopher M. Murray

/s/ Peter D. O'Connell

/s/ Karen M. Fort Hood