

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTHEW MARK DURNEN,

Defendant-Appellant.

UNPUBLISHED

March 16, 2006

No. 258823

Oakland Circuit Court

LC No. 2003-191162-FH

Before: Neff, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of intentionally discharging a firearm at a dwelling, MCL 750.234b(1), and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to a prison term of one to four years for the intentional discharge of a firearm conviction and two years for the felony-firearm. He appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

There was no dispute that defendant intentionally fired a weapon and that one of the bullets he fired entered a home. The contested issue at trial was whether defendant fired *at* the dwelling. Defendant argues that the trial court abused its discretion and denied him a fair trial by not allowing him to call an expert witness to testify that the recovered bullet must have hit something and taken an indirect path before entering the victim's home.

MRE 702 provides:

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Defendant, as the proponent of the evidence, had the burden of establishing the admissibility of his proposed expert testimony. *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 781; 685 NW2d 391 (2004). This Court reviews the trial court's decision regarding the qualification of an expert

witness for an abuse of discretion. *Clerc v Chippewa Co War Mem Hosp*, 267 Mich App 597, 601; 705 NW2d 703 (2005).

The trial court did not abuse its discretion. The court repeatedly invited defense counsel to explain how Howard's proposed testimony comported with the physical evidence in the case. This inquiry relates to the court's obligation to ensure that the testimony was "based on sufficient facts or data." MRE 702. Because defendant was unable to explain how a ricochet was consistent with the path of the bullet, the trial court was justified in concluding that defendant failed to establish the admissibility of the proposed testimony.

Defendant also challenges the sufficiency of the evidence to support his conviction for discharging a firearm in or at a building. MCL 750.234b(1).

"In reviewing a claim of insufficient evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt." *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003). "Circumstantial evidence and reasonable inferences that arise from the evidence can constitute sufficient proof of the elements of the crime." *Id.*

MCL 750.234b(1) provides 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" The prosecution must prove that the defendant intentionally discharged a firearm, the discharge was at a dwelling or occupied structure, and the defendant knew or had reason to believe that the facility was a dwelling or occupied structure. CJI2d 11.26a. Although "at" is not defined in the statute, dictionary definitions of the word "at" include "to or toward the direction of" and "in, on, or near." *People v Wilson*, 230 Mich App 590, 592-593; 585 NW2d 24 (1998).

Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find that defendant fired a weapon five times from a pedestrian walkway crossing a highway in a residential area. Further, the fact that one of the bullets entered a home is circumstantial evidence that defendant fired "toward the direction of" or "near" the home.

Affirmed.

/s/ Janet T. Neff
/s/ Henry William Saad
/s/ Richard A. Bandstra