

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JORGE LOPEZ,

Defendant-Appellant.

UNPUBLISHED

July 20, 2006

No. 261969

Wayne Circuit Court

LC No. 04-011819-01

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

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for the crimes of assault with intent to do great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant had been charged with the greater offense of assault with intent to commit murder, MCL 750.83. Defendant was sentenced to the mandatory two-year prison term on the felony-firearm conviction, followed by a consecutive prison term of 38 months to 10 years on the assault with intent to do great bodily harm less than murder conviction. We affirm. This case is being decided without oral argument under MCR 7.214(E).

On appeal, defendant raises a single issue. Defendant argues that the evidence presented by the prosecution was insufficient to meet the state's burden of proof on the assault charge. Specifically, defendant asserts that insufficient evidence was adduced establishing the requisite intent. We disagree.

“Assault with intent to commit great bodily harm less than murder requires proof of (1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder.” *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). “Intent, like any other fact, may be proven indirectly by inference from the conduct of the accused and surrounding circumstances from which it logically and reasonably follows.” *People v Johnson*, 54 Mich App 303, 304; 220 NW2d 705 (1974). When deciding a challenge to the sufficiency of the evidence in a criminal case, this Court considers the evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).

Viewing the evidence de novo in the light most favorable to the prosecution, we conclude that there was sufficient evidence to prove beyond a reasonable doubt that defendant possessed the requisite specific intent. The victim testified that at approximately 7:33 a.m. on November 9, 2004, she was driving an automobile in Detroit when defendant drove past her and stopped in the intersection. While the victim was waiting for defendant to move his truck out of the middle of the street, she saw him get out of his truck and walk toward her. Defendant then pointed a shotgun at her head and fired. The blast struck the victim's car on the metal strip between the windshield and the driver's side window. The victim was struck in the face by car debris that was dislodged by the shotgun blast.

Testifying as an other-acts witness, a second victim testified that at approximately 7:00 a.m. or 7:15 a.m. on that same day, he was in front of his home in Detroit preparing to drive his two children to school when he noticed a vehicle driving erratically through the parking lot across the street. He testified that as he was getting into his own vehicle, the other vehicle pulled up beside him and defendant got out. Defendant then approached the witness, put a shotgun to his head and pulled the trigger. Fortunately, the gun misfired. The witness then jumped in his car and sped away.

The location of the victim's injury and the fact that defendant aimed at the head of both the victim and the witness is sufficient evidence from which to infer the requisite intent. The fact that neither victim was severely injured or that defendant did not repeatedly fire at them does not negate this conclusion. Their good fortune does not undermine the strength of the people's case.

Accordingly, we conclude that a rational trier of fact could find that the intent element of assault with intent to cause great bodily harm less than murder was proved beyond a reasonable doubt, and thus the conviction must stand.

Affirmed.

/s/ Janet T. Neff
/s/ Richard A. Bandstra
/s/ Brian K. Zahra