

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
August 15, 2013

v

YANNICK NDJIPA,

Defendant-Appellant.

No. 309653
Wayne Circuit Court
LC No. 11-001509-FC

Before: BOONSTRA, P.J., and SAWYER and MURRAY, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of armed robbery, MCL 750.529, assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to 9 to 20 years' imprisonment for the armed robbery conviction, 10 ½ to 20 years' imprisonment for the assault with intent to commit murder conviction, and two years' imprisonment for the felony-firearm conviction. We affirm.

This case arises from a pizza delivery that became an armed robbery late in the evening on January 26, 2011, into the early morning hours of January 27, 2011, in Detroit. On appeal, defendant only contests whether there was sufficient evidence of intent to sustain his conviction of assault with intent to commit murder. This Court reviews an argument regarding the sufficiency of the evidence de novo and views the evidence "in a light most favorable to the prosecution . . . [to] determine whether a rational trier of fact could have found that the essential elements of the crime were prove[n] beyond a reasonable doubt." *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010). "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.'" *Id.* at 195-196 (citation omitted).

Although assault with intent to commit murder requires a specific intent to kill, "[c]ircumstantial evidence and the reasonable inferences it permits are sufficient to support a conviction. . . ." *Ericksen*, 288 Mich App at 196. "A factfinder can infer a defendant's intent from his words or from the act, means, or the manner employed to commit the offense." *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001). Defendant's intent may also be reasonably inferred from the use of a dangerous weapon and the nature of the wounds inflicted. *People v Dumas*, 454 Mich 390, 403; 563 NW2d 31 (1997). A shotgun has specifically been

recognized as “a dangerous weapon.” *People v Jones*, 60 Mich App 681, 682; 233 NW2d 22 (1975).

There was sufficient evidence to convict defendant of assault with intent to commit murder. First and foremost, in his statement to Detroit Police Officer Scott Spencer, defendant admitted that he found the double barrel shotgun in an abandoned house, and, as part of a plan, went to the house to get it before luring the victim, Michael Farris, to the area by placing an order for a pizza delivery. He also admitted that when he went to grab the gun from his cohort, Tayvon Lawrence, he squeezed the trigger of the shotgun and it discharged.

Second, Farris testified that when he arrived at the house to deliver the order, defendant approached from the side of the house, and met him on the sidewalk in front of the home. Lawrence appeared from the side of the house with the loaded shotgun, which was supplied by defendant, and the two began to escort Farris to the backyard. When Farris tried to reason with defendant by calling them brothers, defendant replied, “You ain’t no brother of mine.”

Finally, when Farris stopped walking toward the backyard, he turned and told defendant and Lawrence to do whatever they were going to do. Lawrence replied by saying, “I’m going to send you to meet Jesus.” Defendant went to take the shotgun from Lawrence and the shotgun discharged at close range, hitting Farris in the face and knocking him to the ground. While lying on the ground, someone went through his pockets, removing his wallet and money. Afterward, defendant and Lawrence ran away, leaving Farris lying wounded on the ground.

This evidence is sufficient to establish defendant’s intent to kill and sustain his conviction as the perpetrator of an assault with intent to commit murder. It is reasonable to infer defendant’s intent to kill from the use of the shotgun, the threatening words, and the way defendant lured Farris to the abandoned house to commit the crime, especially since defendant admitted that there was a plan. *Dumas*, 454 Mich at 403; *Hawkins*, 245 Mich App at 458.

Finally, even if the evidence did not support the trial court’s finding that defendant discharged the weapon, sufficient evidence existed to sustain defendant’s conviction under an aiding and abetting theory.

“Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense.” MCL 767.39. Specifically, a person is guilty of aiding and abetting when:

(1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time [the defendant] gave aid and encouragement. [*People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006) (citation omitted).]

Defendant’s cohort, Lawrence, pleaded nolo contendere to armed robbery. Even if he was the principal, “the conviction of the principal is not necessary to a conviction of an

accessory[.]” *People v Genoa*, 188 Mich App 461, 463-464; 470 NW2d 447 (1991), citing *People v Mann*, 395 Mich 472, 478; 236 NW2d 509 (1975).

Defendant admitted that, as part of a plan, he obtained the shotgun from an abandoned house before using his cellular telephone to place an order for delivery to lure Farris to the area. When Farris arrived, defendant helped usher him to the backyard. Although Farris tried to reason with him by saying they were brothers, defendant replied, “You ain’t no brother of mine.” Defendant was also present when Farris’s life was threatened. Finally, after the shotgun discharged, defendant left Farris wounded and lying on the ground. The evidence demonstrates that defendant’s actions aided and encouraged the crime with the intent or knowledge at the time the aid was rendered that the crime would be carried out. See *Robinson*, 475 Mich at 6.

Consequently, whether directly or under an aiding and abetting theory, there was sufficient evidence to sustain the assault with intent to commit murder conviction because it was reasonable to infer a specific intent to kill from the nature of the act, as well as the words, means, and the manner used to commit the offense. *Hawkins*, 245 Mich App at 458.

Affirmed.

/s/ Mark T. Boonstra

/s/ David H. Sawyer

/s/ Christopher M. Murray