

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMON MARSHALL,

Defendant-Appellant.

UNPUBLISHED

July 23, 1996

No. 178441

LC No. 93-007918

Before: Murphy, P.J., and Reilly , and C.W. Simon, Jr.*, JJ

PER CURIAM.

Defendant was convicted by a bench trial of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, intentional discharge of a firearm at a dwelling, MCL 750.234b; MSA 28.431(2), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to concurrent prison terms of two to ten years for the assault conviction and two to four years for the firearm discharge conviction, consecutive to a two year prison term for the felony firearm conviction. We remand for further findings of fact and conclusions of law.

The complainant testified that she was sitting in her living room when she saw a face looking in one of four windows in the front of her house. She said, "What are you doing at the window?" Then shots were fired into three of the windows, but not the window closest to where she was sitting. The complainant's son testified that he was at his cousin's house across the street when he heard the shots. He saw defendant walking across the lawn in front of the complainant's house and firing shots into the windows. Defendant was "six or eight feet" from the windows and was carrying an M-11 handgun.

Defendant argues that the court made insufficient findings of fact concerning intent to do great bodily harm. After the court discussed its findings with regard to intent, it stated:

The other question becomes what was the state of mind, what was his intent. The pictures show that there was severe damage done to this home, a number of window[s]

* Circuit judge, sitting on the Court of Appeals by assignment.

were shattered. There is testimony indicating that anywhere from eight to twelve or even more shots were fired into this home. We can make some decision regarding intent based on the type of weapon used, and we had a kind of description of the weapon from [the complainant's son]. The damage that was done to the structure should give us some indication as to the intent of the shooter.

The fact that [the complainant] indicated that she was seated in the living room watching TV, she saw this man come to the window, she could not identify, and she asked him what was he doing or what was he there for or some words to that effect, and shortly after, the shots were fired.

It appears to me that if the shooter was intent on killing [the complainant], and she is the person named in this information, that he had ample opportunity to do that by simply staying in that position firing as many shots as were fired directly at her. He didn't do that, he backed away. Testimony is that he was six to eight feet away from the house firing into the house, so that doesn't appear that there was a clear intent to commit murder. Certainly there was a clear intent to do great damage to this property.

The court then stated its verdict as set forth above.

When the right to a trial by jury has been waived by a defendant, the trial court, sitting as a factfinder, must make specific findings of fact and state its conclusions of law. MCR 6.403. The court need not make specific findings of fact regarding each element of the crime. *People v Vaughn*, 186 Mich App 376, 384; 465 NW2d 365 (1990). The findings are adequate if it appears that the trial court was aware of the factual issues and correctly applied the law. *Id.* A court's failure to find the facts does not require remand where it is manifest that the court was aware of the factual issue, that it resolved the issue, and that further explication would not facilitate appellate review. *People v Legg*, 197 Mich App 131, 134-135; 494 NW2d 797 (1992).

In this case, the court did not state that it found defendant had the intent to do great bodily harm less than murder. Moreover, the court's reasons for finding that defendant did not intend to commit murder appear to be inconsistent with a finding that defendant intended to do great bodily harm less than murder. The elements of assault with intent to murder are: (1) an attempt or offer with force or violence to do corporal hurt to another; (2) coupled with an intent to do great bodily harm less than murder. *People v Harrington*, 194 Mich App 424, 428; 487 NW2d 479 (1992). The court's findings indicate that it believed defendant "had ample opportunity" to kill the complainant by firing shots directly at her, and that defendant "did not do that, he backed away." Thus, the court seems to have rejected the inference that as defendant fired shots into the living room, he intended to hit the complainant. If defendant did not intend to hit the complainant with the shots he fired, it seems unlikely that he intended to do great bodily harm less than murder. Because it is unclear from these findings whether the court correctly applied the law and further explication will aid appellate review, we conclude that remanding for further findings of fact and conclusions of law is necessary. *Legg, supra.*

We remand for additional fact finding and conclusions of law on the record already made. *People v Jackson*, 390 Mich 621, 628; 212 NW2d 918 (1973); *People v Taylor*, 422 Mich 554, 569; 375 NW2d 1 (1985). Within twenty-one days of the date this opinion is filed, the Recorder's Court shall file with the clerk of this Court supplemental findings of fact stating whether defendant intended to do great bodily harm less than murder and the basis for that finding. If the court finds that defendant lacked that intent, it shall state what intent he did possess and state the basis for that finding.

In light of our resolution of this issue, discussion of defendant's claim that there was insufficient evidence would be premature.

Remanded. We retain jurisdiction.

/s/ William B. Murphy
/s/ Maureen Pulte Reilly
/s/ Charles W. Simon, Jr.