

STATE OF MICHIGAN

COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN LLOYD FRIDD,

Defendant-Appellant.

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UNPUBLISHED

October 28, 1997

No. 193134

Jackson Circuit Court

LC No. 95-73452-FC

Before: Young, P.J., and Markman and Smolenski, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to commit murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant as an adult to ten to thirty years' imprisonment for the assault with intent to commit murder conviction to be served consecutively to the mandatory two-year sentence for the felony-firearm conviction. Defendant appeals from his convictions and sentence as of right. We affirm.

Defendant first argues that the evidence submitted at trial was insufficient to establish that he possessed the requisite specific intent to kill for the crime of assault with intent to commit murder. We disagree. When reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1202 (1992).

The elements of assault with intent to commit murder are: (1) an assault, (2) with the specific intent to commit murder, (3) which, if successful, would make the killing murder. *People v Cochran*, 155 Mich App 191, 193; 399 NW2d 44 (1986). The requisite intent to kill for the crime of assault with intent to commit murder may be proved by inference from any facts in evidence. *People v Lawton*, 196 Mich App 341, 350; 492 NW2d 810 (1992). Moreover, questions of credibility and intent should be left to the trier of fact to resolve. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

During trial, the prosecution presented evidence that defendant discharged a .22 caliber Magnum revolver from the vehicle in which he was riding, striking the victim, the driver of another vehicle, in the face. Defendant testified that he did not intend to kill the victim when he fired the gun; rather, he claimed that the gun merely “went off” while he prepared to fire a warning shot into the air. Because intent and premeditation may be inferred from all the facts and circumstances, *People v Daniels*, 163 Mich App 703, 706; 415 NW2d 282 (1987), and because minimal circumstantial evidence is sufficient to prove an actor's state of mind, *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984), we find that in viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find that defendant possessed a specific intent to kill the victim when he fired his gun at the victim.

Defendant, who was fifteen years old at the time of the shooting, next argues that the trial court erred in sentencing him as an adult because it considered prior juvenile petitions filed against him which did not result in convictions but were nevertheless included in the presentence report. We disagree.

MCR 6.93(E)(1) provides that, at the juvenile sentencing hearing, the trial court “shall receive and consider the presentence report prepared by the probation officer.” In addition, MCR 6.425(A)(4) provides that the presentence report, depending on the circumstances, must include “a brief social history of the defendant.” In *People v Cross*, 186 Mich App 216, 218; 463 NW2d 229 (1990), this Court stated that juvenile charges which did not result in convictions may be mentioned in a presentence report in order to provide the sentencing court with the kind of information required by MCR 6.425(A)(4). Because there is no indication in the record that the trial court considered the dismissed petitions for any purpose other than as contemplated by the court rules and *Cross*, it did not err in sentencing defendant as an adult.

Affirmed

/s/ Robert P. Young, Jr.

/s/ Stephen J. Markman

/s/ Michael R. Smolenski