STATE OF MICHIGAN

COURT OF APPEALS

In Re TIMNELL MONTGOMERY, a Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMNELL MONTGOMERY,

Defendant-Appellant.

UNPUBLISHED
June 19, 1998

No. 201236
Wayne Probate Court
LC No. 94-313827

Before: Fitzgerald, P.J., and Holbrook, Jr., and Cavanagh, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797, possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), unlawfully driving away an automobile, MCL 750.413; MSA 28.645, malicious destruction of personal property over $100, MCL 750.377a; MSA 28.609(1), carrying a concealed weapon, MCL 750.227; MSA 28.424, and assault with intent to murder, MCL 750.83; MSA 28.278. As a juvenile offender, defendant was committed to the Department of Social Services. Defendant's commitment is scheduled to be reviewed on January 7, 1999. We affirm.

Defendant raises a two pronged attack on the sufficiency of the evidence underlying his convictions. "In determining whether sufficient evidence has been presented to sustain a conviction, an appellate court is required to view 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 proven beyond a reasonable doubt." *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994). "Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime." *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). Any questions regarding credibility of witnesses are properly left to the trier of fact. *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991).

First, defendant argues that with regard to each crime for which he was convicted, there was insufficient evidence to support the finding that it was defendant who committed those crimes. We disagree. At trial, the complaining witness identified defendant as the perpetrator of these crimes. He also testified that he had previously identified defendant at the preliminary examination as being the perpetrator. Further, one of the arresting officers identified defendant as the man he saw standing next to the complaining witness, and later saw running away from the scene on the night in question. We believe this evidence is more than sufficient to establish that defendant was indeed the perpetrator of these crimes.

Defendant also argues that the evidence was insufficient to support his conviction for assault with intent to murder. We again disagree. "The elements of assault with the intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of the offense." *People v Lawton*, 196 Mich App 341, 350; 492 NW2d 810 (1992) (citation omitted). The complaining witness testified that as he approached his stalled car, he saw an individual exit from the passenger side and run into an area that separated two nearby homes. After reaching his car a few moments later, he testified that he observed the silhouette of an individual in that area. As he stood beside his stalled car, the complaining witness heard a gunshot. Turning in the direction of the sound, he "saw the flash from a gun or something" emanating from the passage between these same two nearby homes.

We believe -- when viewed in a light most favorable to the prosecution -- this evidence is sufficient to sustain defendant's conviction of assault with intent to commit murder. There was evidence adduced at trial to support the presumption that it was defendant who had exited the car and run between the two homes. We believe, therefore, that a reasonable jury could infer that it was defendant's silhouette that the complaining witness observed moments later in the darkened area between the two homes. Because the complaining witness heard a gunshot and saw a flash of light originate in the darkened area where he had just observed defendant's silhouette, we also believe a reasonable jury could infer that defendant had discharged a firearm, and thus had committed an assault. Further, given that defendant had aimed and fired a deadly weapon at the complaining witness from a relatively close distance, we believe that a jury could justifiably conclude from this evidence that defendant had acted with the requisite specific intent. See *Lawton*, supra at 350 (observing that """[t]he intent to kill may be proved '[by] inference from any facts in evidence,'""" quoting *People v Drayton*, 168 Mich App 174, 177; 423 NW2d 606 [1988], quoting *Roberts v People*, 19 Mich 401, 416 [1870], quoting *People v Scott*, 6 Mich 287, 295 [1859]); *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985) (observing that "minimal circumstantial evidence is sufficient to sustain a conclusion that a defendant entertained the requisite intent"). Finally, we believe a reasonable jury could conclude that had the complaining witness been shot and killed, the intent with which defendant acted would make the killing murder.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh