

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARNOLD LYLES,

Defendant-Appellant.

UNPUBLISHED

July 31, 2001

No. 219716

Wayne Circuit Court

LC No. 98-007116

Before: Doctoroff, P.J., and Murphy and Zahra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of four counts of assault with intent to commit murder, MCL 750.83, and of felony-firearm, MCL 750.227b. Defendant was sentenced to four concurrent terms of fifteen to thirty years' imprisonment for the convictions of assault with intent to commit murder and to the mandatory two-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the prosecution failed to show beyond a reasonable doubt that he intended to kill the three police officers that apprehended him. We disagree.

This Court reviews issues regarding the sufficiency of the evidence presented at a bench trial in a light most favorable to the prosecution, seeking to determine whether a rational trier of fact could have found all the necessary elements of the offense beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). 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 a murder. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). The intent to kill may be inferred from minimal evidence. *Id.* Assault with intent to commit murder is a specific intent crime and a defendant may have the requisite state of mind without directing his actions toward any particular victim. See *People v Lawton*, 196 Mich App 341, 350-351; 492 NW2d 810 (1992).

Here, defendant shot his initial victim three times in full view of three police officers. The officers were all seated in the same semi-marked police car mere yards away from the shooting. They immediately began to exit their vehicle while ordering defendant to "freeze."

Instead of complying with the orders, however, defendant attempted to flee the scene, in the process turning and firing his two remaining rounds toward the officers.¹ The intentional discharge of a firearm at someone is an assault. *Id.* at 349. Defendant's intent to kill may properly be inferred from his use of a deadly weapon. See *People v Turner*, 213 Mich App 558, 567; 540 NW2d 728 (1995). Sufficient evidence supports the court's conclusion that defendant possessed the intent to kill when he shot at the three police officers.²

Defendant next argues that the trial court failed to adequately consider his self-defense theory. He additionally contends that in light of his claim of self-defense the conviction of assault with intent to murder his initial victim was against the great weight of the evidence. We disagree with both claims for the same reason.

This Court reviews a trial court's findings of fact for clear error, MCR 2.613(C); *People v Hermiz*, 235 Mich App 248, 255; 597 NW2d 218 (1999), and gives special deference to a trial court's resolution of factual issues involving the credibility of the witnesses. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997). Here, the trial court considered defendant's theory and simply disbelieved his version of the facts. We find no clear error in that conclusion given the overwhelming testimony establishing that defendant approached the victim's car, and without provocation pointed a gun through the driver's side window and shot the victim three times in the upper body and head region.

Defendant next asserts that he was denied effective assistance of counsel because his attorney failed to (1) sufficiently cross-examine a witness, (2) address the fact that the evidence did not prove that the .38 slug presented at trial came from his gun, and (3) present an intoxication defense. We again disagree. Defendant failed to preserve this issue for appeal because he did not move for a new trial or an evidentiary hearing. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). Therefore, our review is limited to the existing record. *Id.*

To prove a claim of ineffective assistance of counsel a defendant must show that counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced the defense so as to deny the defendant a fair trial. *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). On the issue of deficient performance, a defendant must overcome the strong presumption that counsel's assistance constituted sound trial strategy. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). Prejudice denying a fair trial is

¹ Testimony established that defendant's gun was a five-shot .38 revolver.

² Defendant also contends, with respect to the assault convictions regarding the three officers, that the evidence was insufficient to support one of those convictions because he fired only two bullets. To the contrary, under any number of permutations the two bullets - even a single bullet - could have caused the deaths of all three officers. For example, a lone shot could have struck the gas tank of a vehicle resulting in an deadly explosion. Certainly the officers were all in fear for their lives, each testifying that they ducked for cover within and behind their vehicle. Defendant's reckless indifference for the lives of any and all of the three officers sufficiently supports the convictions.

demonstrated when it may be concluded that there exists a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. *Id.* at 302-303. In this instance, neither more extensive cross-examination of the disputed witness nor additional proofs regarding the .38 slug would have contradicted the overwhelming eye-witness testimony that illustrated defendant's guilt. Moreover, the record wholly fails to support defendant's theory of intoxication. Accordingly, we find that defendant has failed to show that, but for the alleged deficiencies in performance, the result of his trial would have been different.

Defendant's final argument, that he is entitled to a corrected presentence investigation report, is moot because the trial court has already ordered that a copy of the corrected report be sent to the Michigan Department of Corrections to replace the original. See *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

Affirmed.

/s/ Martin M. Doctoroff
/s/ William B. Murphy
/s/ Brian K. Zahra