STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LASHAWN THOMAS,

Defendant-Appellant.

UNPUBLISHED
April 30, 2002

No. 228145
Wayne Circuit Court
LC No. 99-006891

Before: Jansen, P.J., and Holbrook, Jr., and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction on two counts of assault with intent to do great bodily harm less than murder, MCL 750.84, and one count of possession of a firearm during commission of a felony (felony-firearm), MCL 750.227b(1). Defendant was sentenced as a second habitual offender, MCL 769.11, to concurrent prison terms of seventy-one months to fifteen years on each assault count. Defendant also was sentenced to a concurrent two years' imprisonment on the felony-firearm charge. We affirm.

Defendant's convictions stem from a shooting that occurred on July 2, 1999. The victims, Billy Todd and Karah Haight, were attacked while driving in Todd's car. Defendant first contends that the trial court erred in denying his motion for a directed verdict of acquittal on the charges of assault with intent to murder because the prosecutor failed to present sufficient evidence to establish a specific intent to kill. We disagree.

> When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime were proved beyond a reasonable doubt. [*People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).]

In an assault with intent to murder case, the intent to kill may be proved by inference from any facts in evidence. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). "Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *Id.*

Testimony at trial indicated defendant fired a semi-automatic weapon through the windshield of the victims' car in the general vicinity of the occupants' heads. Todd testified that if he and Haight had not ducked out of the way, they likely would have been hit in the head or body by the bullets. From this evidence, the jurors reasonably could have inferred an intent to kill based on defendant's use of a deadly weapon and the manner and location of the gunshots. *Id.* Thus, the trial court did not err in finding the prosecutor presented sufficient evidence to establish defendant's intent to kill.

Second, defendant asserts the trial court erred in denying his motion for mistrial. We disagree. Specifically, defendant argues that the proceedings should have been stopped when a police officer testifying for the prosecution mentioned an armed robbery charge pending against defendant. Prior to empanelling the jury, the court granted defendant's motion in limine to exclude evidence of the pending charge. We review a trial court's decision to deny a motion for mistrial for an abuse of discretion. *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001); *People v Griffin*, 235 Mich App 27, 36; 597 NW2d 176 (1999).

It is clear from the record that the officer's statement regarding the armed robbery charge was unresponsive to the prosecutor's questioning. "As a general rule, unresponsive testimony by a prosecution witness does not justify a mistrial unless the prosecutor knew in advance that the witness would give the unresponsive testimony or the prosecutor conspired with or encouraged the witness to give that testimony." *People v Hackney*, 183 Mich App 516, 531; 455 NW2d 358 (1990). The record does not demonstrate that the prosecutor either conspired with or encouraged the officer to provide the challenged testimony. Indeed, the trial court concluded the prosecutor had properly instructed the witness not to mention the armed robbery charge and that the witness mentioned it inadvertently.

Additionally, we agree with the trial court that the statement was vague and did not directly implicate defendant in this prior crime. Further, we note that immediately after the errant statement, the court instructed the jury to disregard it. Accordingly, we find no abuse of discretion in the trial court's finding.

Affirmed.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.
/s/ Richard Allen Griffin