

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of SEAN CHARDERRICK  
DANIELS, Minor.

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PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

SEAN CHARDERRICK DANIELS,

Respondent-Appellant.

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UNPUBLISHED

March 9, 2010

No. 291828

Wayne Circuit Court

Family Division

LC No. 08-482876

Before: Servitto, P.J., and Bandstra and Fort Hood, JJ.

PER CURIAM.

Following a bench trial, respondent, a juvenile, was adjudicated guilty of assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. He appeals as of right. We affirm.

At trial, Ricky Campbell testified that he confronted respondent and his brothers about an earlier assault against Campbell's nephew. According to Campbell, respondent and his brother both started shooting at him. The trial court adjudicated respondent guilty of assaulting Campbell by firing a gun at him with the intent to commit murder.

On appeal, respondent argues that the evidence was insufficient to establish his identity as one of the persons who shot at Campbell. We disagree. When reviewing a challenge to the sufficiency of the evidence at a bench trial, we review the record de novo, viewing the evidence in a light most favorable to the prosecution, to determine whether the trial court could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). All conflicts in the evidence must be resolved in favor of the prosecution. *Id.* at 738. The reasonable doubt standard also applies in juvenile delinquency proceedings. MCR 3.942(C); *People v Hana*, 443 Mich 202, 211 n 31; 504 NW2d 166 (1993); *In re Weiss*, 224 Mich App 37, 42; 568 NW2d 336 (1997).

In this case, respondent's identification as one of the shooters is supported by the testimony of three eyewitnesses. Their testimony, viewed in a light most favorable to the prosecution, was sufficient to establish respondent's identity beyond a reasonable doubt. The credibility of their testimony was for the trial court, as the trier of fact, to resolve. *People v*

*Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). This case presents no exceptional circumstances to remove the credibility issue from the trial court. *People v Lemmon*, 456 Mich 625, 642-644; 576 NW2d 129 (1998).

To the extent respondent suggests that the witnesses' identification testimony should have been suppressed because it lacked an independent basis, this evidentiary issue is unpreserved because respondent did not move to suppress the testimony below. *Davis, supra*. Therefore, our review of this issue is limited to plain error affecting respondent's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); see also MCR 3.901(B)(1) and MCR 3.902(A) (limitations on the correction of error in a delinquency proceeding are governed by MCR 2.613), and MCR 2.613(C) (evidentiary error is not a ground for disturbing a judgment or order unless refusal to take action appears inconsistent with substantial justice).

The need for an independent basis for a witness's in-court identification arises only where an individual has been subjected to an invalid pretrial identification procedure. *People v Gray*, 457 Mich 107, 111-115; 577 NW2d 92 (1998); *People v Barclay*, 208 Mich App 670, 675; 528 NW2d 842 (1995). In this case, although respondent argues that the witnesses' identification testimony was not reliable, he has not shown that any of the witnesses were subjected to an improper identification procedure. As indicated previously, the reliability of the witnesses' identification testimony was for the trier of fact to resolve. Respondent has not shown any plain error in its admission. *Davis, supra* at 702-703. Indeed, Tremicka Harris testified that she was familiar with respondent because he lived across the street from her house and she had seen him "a lot of times." Although Campbell was not as familiar with respondent, he indicated that he was engaged in a conversation with respondent and his brother before the assault started, giving him ample opportunity to observe respondent. Accordingly, we reject this claim of error.

We also reject respondent's argument that the evidence was insufficient to establish his intent to kill Campbell. Because it is difficult to prove a person's state of mind on issues such as knowledge and intent, minimal circumstantial evidence is sufficient to establish the state of mind, "which can be inferred from all the evidence presented." *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008); see also *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993) "The use of a lethal weapon is the kind of evidence which will support an inference of an intent to kill." *People v Turner*, 62 Mich App 467, 470; 233 NW2d 617 (1975). Viewed in a light most favorable to the prosecution, the evidence that both shooters fired at Campbell, and that a police officer found a bullet hole in a garbage can that Campbell used to take cover, was sufficient to enable the trial court to find beyond a reasonable doubt that respondent shot at Campbell with the intent to commit murder.

Further, contrary to respondent's argument on appeal, the trial court's findings of fact were sufficient to support its decision. The findings are sufficient to reveal that the court was aware of the issues in the case and correctly applied the law. *People v Armstrong*, 175 Mich App 181, 185; 437 NW2d 343 (1989); see also *People v Wardlaw*, 190 Mich App 318, 320-321; 475 NW2d 387 (1991). In addition, the trial court's finding that respondent committed the assault on Campbell with the intent to commit murder is not clearly erroneous. *In re Hardin*, 184 Mich App 107, 108-109; 457 NW2d 347 (1990); see also *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006).

Respondent also argues that trial counsel was ineffective for not requesting the appointment of an expert on eyewitness identification. Because respondent did not raise this issue in an appropriate motion in the trial court, our review is limited to errors apparent from the record. *People v Cox*, 268 Mich App 440, 453; 709 NW2d 152 (2005). To prevail on this claim, respondent has the burden of showing both deficient performance and prejudice. *In re Ayres*, 239 Mich App 8, 21; 608 NW2d 132 (1999). Although identity was the principal issue at trial, respondent has not overcome the presumption that counsel declined to request an identification expert as a matter of trial strategy where some of the witnesses were already familiar with him before the day of the offense. *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004). Further, respondent has not presented any offer of proof showing that an expert witness was available who could have provided favorable testimony. See *People v Ackerman*, 257 Mich App 434, 455; 669 NW2d 818 (2003). Therefore, respondent has failed to establish that defense counsel was ineffective.

Affirmed.

/s/ Deborah A. Servitto  
/s/ Richard A. Bandstra  
/s/ Karen M. Fort Hood