

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY RICARDO PIPPIN,

Defendant-Appellant.

UNPUBLISHED

November 24, 1998

No. 201703

Recorder's Court

LC No. 94-008677

Before: Griffin, P.J., and Gage and R. J. Danhof*, JJ.

PER CURIAM.

Defendant appeals by leave granted from his bench trial convictions 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). We affirm.

Defendant first argues that the trial court erred in convicting him of assault with intent to commit murder when defendant was charged with second-degree murder. We disagree. Intent to kill is but one of the possible mental states sufficient to establish the malice element of second-degree murder. *People v Aaron*, 409 Mich 672, 715; 299 NW2d 304 (1980). However, specific intent to kill is the only form of malice that supports a conviction of assault with intent to commit murder. *Maher v People*, 10 Mich 212, 216-217 (1862). Here, the trial court's finding that defendant had formed the specific intent to kill when he pointed his weapon at the victim was sufficient to support his conviction of assault with intent to commit murder. See *People v Bailey*, 451 Mich 657, 667, 669; 549 NW2d 325 (1996); *People v Gjidoda*, 140 Mich App 294, 297; 364 NW2d 698 (1985) (the trial court's mere finding that the defendant acted with malice in shooting the two victims was sufficient to sustain conviction of second-degree murder of one victim and assault with intent to commit murder of the other victim). See also *People v Harding*, 443 Mich 693, 714 n 22; 506 NW2d 482 (1993) (Brickley, J) (assault with intent to commit murder is a lesser included offense of felony murder only if the malice to establish felony murder is the intent to kill, not the intent to inflict great bodily harm or the intent representing a depraved heart). Thus, under the facts of this case, assault with intent to commit murder was a lesser included offense of second-degree murder.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Neither do we agree with defendant that he could not be convicted of a specific-intent lesser offense—assault with intent to commit murder—when he was charged with a general intent offense—second-degree murder. Where an applicable lesser included offense requires proof of specific intent, it does not necessarily follow that the greater offense also require proof of specific intent. *Bailey, supra* at 669; *People v Langworthy*, 416 Mich 630, 644; 331 NW2d 171 (1982). Accordingly, we find no error.

Defendant next argues that he is entitled to a remand because the trial court's findings did not address defendant's intoxication defense. We disagree. The defense of voluntary intoxication will negate the specific intent element of a crime if the defendant was so intoxicated that he was rendered incapable of entertaining the requisite intent. *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995). Although evidence was presented that defendant had been drinking throughout the day, the evidence does not support the conclusion that the level of intoxication was so great as to negate his ability to form the specific intent to commit murder. Defendant testified in detail as to the events that transpired on July 29 and 30, 1994, and further testified that he was not so drunk that he did not know what was transpiring. The defense theory was that defendant played no role in the shooting and that he was in the alley only because he was on his way toward a friend's house. Factual findings in a bench trial are sufficient as long as it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). Here, the trial court addressed the issues raised by defendant, but found that defendant had formed the specific intent to kill when he pointed his weapon at the victim. Accordingly, we conclude that the trial court was aware of the issues in the case and correctly applied the law; therefore, we find it unnecessary to remand this matter. *Id.* at 134-135.

Lastly, we disagree with defendant's contention that his conviction of assault with intent to commit murder was not supported by sufficient evidence or, in the alternative, was against the great weight of the evidence. Evidence was presented that defendant was in the alley, that he pointed his weapon at the victim, and that he was the only person in the alley shooting a weapon. Seconds later, the victim was found lying in the alley fatally wounded. This evidence was sufficient for a rational trier of fact to conclude beyond a reasonable doubt that defendant committed the offense of assault with intent to commit murder. Moreover, contrary to defendant's argument, the fact that certain prosecution witnesses were gang members does not lead to the conclusion that the verdict was against the great weight of the evidence. Issues of credibility of witnesses are for the trier of fact to determine. *People v Carigon*, 128 Mich App 802, 810; 341 NW2d 803 (1983); see also *People v Lemmon*, 456 Mich 625, 643; 576 NW2d 129 (1998) ("conflicting testimony or a question as to credibility of a witness are not sufficient grounds for granting a new trial based on the great weight of the evidence"). Accordingly, defendant's convictions are sustained.

Affirmed.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage
/s/ Robert J. Danhof