

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT STEELE, JR.,

Defendant-Appellant.

UNPUBLISHED
October 22, 1999

No. 202651
Genesee Circuit Court
LC No. 95-052949 FC

Before: Wilder, P.J., and Bandstra and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right his jury 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). The trial court sentenced defendant to consecutive terms of thirteen to twenty-five years' imprisonment for the assault with intent to commit murder conviction and two years' imprisonment for the felony-firearm conviction. We affirm.

I

Defendant argues that the evidence was insufficient to support the conviction of assault with intent to commit murder. When ascertaining whether sufficient evidence was presented at trial to support a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

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 murder. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). The intent to kill may be proven by inference from any facts in evidence. *Id.*

In the instant case, the prosecution presented evidence that Andrea Smoots had been involved in an altercation with defendant's sister, Michelle, approximately six hours before the shooting occurred. Smoots, Mara Keels, and Quioia Caldwell were driving home from a party and had stopped on Jackson Street when a red car containing defendant and Michelle pulled up behind them. Defendant went over to the women's car and tried to open the door, but could not because it was locked or jammed. At the time, defendant had one hand behind his back, and although Smoots could not see if he was holding anything, she was afraid that he had a weapon. Defendant said, "[W]hich one of you hoes got a beef with my sister?" Smoots drove off "real fast," and defendant and Michelle chased them. Smoots pulled into the driveway of Claudia Miller's house, and the other car pulled up behind her. While Smoots was still in the car, gunshots were fired. Smoots testified that she heard eight or nine shots. Smoots saw defendant "hanging out" the passenger window with his arm extended; defendant had an object in his hand that she could not definitively identify because she was "trying to duck."

Keels testified that she heard approximately nine shots coming from Michelle's car but did not see who was shooting. Sergeant Warren testified that when he interviewed her four days after the incident, Keels identified defendant as the shooter.

Keels also testified that the day after the shooting, she saw that someone had called her but had not left a message on her answering machine, so she dialed "star 69" and recognized the person who answered the telephone as defendant. Sergeant Warren stated that Keels had told him that during their conversation, defendant had said he had "wanted to kill that girl."

Officer Tate testified that Smoots, Keels, and Caldwell all said they knew defendant pretty well and identified him as the shooter. In addition, Officer Tate stated that there were bullet holes in the right side of their car and in the side of the house, and one of the windows of the house was broken.

Defendant argues that the evidence does not support a finding that he intended to kill Smoots or the other two women. At most, defendant asserts, the evidence shows that he merely intended to frighten the women. We disagree. Witnesses testified that defendant's sister and Smoots had an argument hours before the shooting. Witnesses also identified defendant as the person who fired eight or nine shots at the car Smoots was driving and stated that defendant had been in a car driven by his sister at the time. The prosecution presented evidence that defendant told Keels that he had "wanted to kill that girl." Given this evidence, a rational trier of fact could find beyond a reasonable doubt that defendant possessed the requisite intent for assault with intent to commit murder. See *Carines, supra*.

II

Defendant also claims that the trial court abused its discretion in sentencing him as an adult. Defendant was fifteen years old at the time of the shooting and sixteen years old at the time of sentencing.

Review of a trial court's decision to sentence a minor as a juvenile or as an adult is a bifurcated one. First, the trial court's factual findings are reviewed under the clearly erroneous standard. The trial court's factual findings are clearly erroneous if, after review of the record, this Court is left with a

definite and firm conviction that a mistake has been made. Second, the ultimate decision whether to sentence the minor as a juvenile or as an adult is reviewed for an abuse of discretion. *People v Launsbury*, 217 Mich App 358, 362; 551 NW2d 460 (1996).

Defendant argues that the trial court clearly erred in finding that defendant is not amenable to treatment in the juvenile system and that defendant's best chance for rehabilitation would be in the adult system. We disagree. Probation agent Connie Gillikin and Family Independence Agency worker Yvonne Thompson-Seals both testified that defendant failed to make any progress during his time in the juvenile detention center. Defendant was immature, refused to participate in treatment, and was disruptive of the rehabilitation of others. Given this testimony, the trial court's finding that defendant was not likely to be rehabilitated in the juvenile system is not clearly erroneous.

In deciding to sentence defendant as an adult, the trial court carefully considered the factors enumerated in MCR 6.931(3). Given the circumstances surrounding the offense, defendant's pattern of living, and his belief that he did not need to be rehabilitated, the trial court concluded that defendant was likely to pose a danger to the public if he were released at age twenty-one. Under the circumstances, we find no abuse of discretion in the court's decision to sentence defendant as an adult.¹

Affirmed.

/s/ Kurtis T. Wilder

/s/ Richard A. Bandstra

/s/ Mark J. Cavanagh

¹ Defendant also argues that his sentence is disproportionate. However, this issue is not preserved because it was not raised in his statement of questions presented on appeal as required by MCR 7.212(C)(5). See *People v Price*, 214 Mich App 538, 548; 543 NW2d 49 (1995).