

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODNEY TERRELL EDMONDS,

Defendant-Appellant.

UNPUBLISHED

September 24, 1996

No. 174453

LC No. 93-3057

Before: Doctoroff, C.J., and Hood and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of second-degree murder, MCL 750.317; MSA 28.549, assault with the intent to commit murder, MCL 750.83; MSA 28.278, two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and carrying a concealed weapon, MCL 750.227; MSA 28.424. Defendant received concurrent sentences of 17½ to 28 years' imprisonment for the murder conviction, 10 to 15 years for the assault conviction, and 2½ to 5 years for carrying a concealed weapon. Each of defendant's sentences were imposed consecutively to the two two-year concurrent sentences for his felony-firearm convictions. We affirm.

At trial, defendant alleged that it was not he who fired the fatal bullet into the decedent, Jerome Smith. Defendant also claimed that his intent to shoot Derrick Byrd (the intended victim) could not be transferred to the fatal wound accidentally inflicted upon Smith.

I

On appeal, defendant first argues that the evidence presented was insufficient to support the conclusion that he was responsible for shooting and killing Smith. We disagree. To review a claim of sufficiency of the evidence, this Court must consider the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have concluded that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hurst*, 205 Mich App 634, 640; 517 NW2d 858 (1994).

In the present case, the circumstantial evidence was sufficient to support the jury's conclusion that defendant fired the bullet that killed Smith. Evidence of the following was admitted at trial: Smith was standing directly behind, or next to, Byrd when defendant shot at Byrd. Defendant fired at least three or four times, yet Byrd sustained only two bullet wounds. One bullet appeared to just miss Byrd's head. Although the other witnesses retreated inside the apartment, no one knew where Smith was. Immediately following the shooting, Smith was found on the back porch groaning. A forensic pathologist testified that the fatal bullet punctured only the lower tip of Smith's heart, which likely allowed him to remain functional and considerably active for several minutes after being shot, thus conceivably allowing him to wander to the back porch. A firearms expert testified that the bullet which killed Smith was fired from the same weapon as the bullets found in Byrd's body. Following the shooting, defendant fled the scene. When he was apprehended, defendant stated that he did not dispose of his weapon until he reached the bushes near his home. Thus, it would have been virtually impossible for another individual to have shot Smith with the same gun with which defendant shot Byrd.

After considering the aforementioned evidence, and leaving all issues of witness credibility to the jury, *People v Palmer*, 392 Mich 370, 375-376; 220 NW2d 393 (1974), we are convinced that there was sufficient evidence upon which the jury could find defendant responsible for Smith's death.

II

Defendant next argues that the court erred in instructing the jury on the doctrine of transferred intent. Defendant contends that there was no evidence that he intended to kill Byrd, there was no evidence to indicate that Smith was shot while defendant was trying to shoot Byrd, and the doctrine does not apply where the intended victim is wounded. Defendant argues that he was appropriately punished for his intended actions, notwithstanding the accidental victim. We disagree. Initially, we note that defendant failed to properly preserve this issue for appeal. Nevertheless, a review of the evidence reveals that the instruction on the doctrine of transferred intent was appropriately given in the present case. MCR 2.516(C); *People v Kelly*, 423 Mich 261, 271-272; 378 NW2d 365 (1985).

Intent and premeditation may be inferred from all the facts and circumstances. *People v Daniels*, 163 Mich App 703, 706; 415 NW2d 282 (1987). Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient. *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984). Here, defendant used a dangerous weapon in a way that was likely to cause death, he inflicted serious wounds, and he deliberately returned to the scene to shoot Byrd. Based on these facts, we find that there was sufficient evidence from which the jury could infer an intent to kill. *People v Martin*, 392 Mich 553, 561; 221 NW2d 336 (1974); CJI2d 16.21.

In addition, we find that the jury could have reasonably concluded that Smith was accidentally shot while defendant was shooting at Byrd. The jury heard evidence that Smith was standing next to Byrd when defendant began shooting at Byrd, that Smith sustained a deadly wound from a bullet knowingly discharged from defendant's gun, and that defendant disposed of his gun as he neared his home. No evidence indicated that defendant shot anyone after he attempted to shoot Byrd. Based on

this evidence, we find that the jury could have reasonably concluded that Smith was accidentally shot while defendant was shooting at Byrd.

Defendant also contends that, based on language in a case in the California Court of Appeals, the doctrine of transferred intent was inapplicable. The relevant language is as follows:

When the intended victim is *killed*, however, there is no need for such an artificial doctrine. *The defendant's premeditation, deliberation, intent to kill and malice aforethought are all directly employable in the prosecution for murdering his intended victim.* The accidental killing may thus be prosecuted as a manslaughter or a second degree murder without ignoring the most culpable mental elements of the situation. [*People v Berreuta*, 162 Cal App 3d 454, 460; 208 Cal Rptr 635 (1984) (emphasis added).]

The present case is distinguishable because defendant's intended victim was not killed, whereas his accidental victim was. The jury in this case concluded that defendant intended to kill Byrd, was unsuccessful in that attempt, but accidentally killed Smith. Thus, defendant intended to kill, and did, in fact, commit a killing. In this situation, defendant's most culpable mental elements would go unpunished if he were held accountable only for the crime of assault with the intent to kill, rather than murder. Accordingly, we conclude that defendant failed to establish that the court erred in instructing the jury on the doctrine of transferred intent.

III

Next, defendant argues that, because there was insufficient evidence of premeditation and deliberation, the court erred in instructing the jury on the crime of first-degree murder. Again, in failing to raise an objection at trial, defendant has not preserved this issue for appellate review. We nevertheless find that the court properly instructed the jury, and therefore no relief is necessary to avoid manifest injustice. MCR 2.516(C); *Kelly, supra* at 271-272.

In determining whether such an instruction should be given to the jury, the trial court should consider whether the evidence adduced at trial would support a guilty verdict on that charge. See *People v Chamblis*, 395 Mich 408, 423; 236 NW2d 473 (1975), overruled in part on other grounds 416 Mich 252, 259; 330 NW2d 675 (1982). In addition, the court should recognize the jury's role as the sole judge of all the facts, the jury's right to believe or disbelieve any or all of a witness' testimony, and the jury's duty to decide the issues of witness credibility. *Id.* at 420, 422. The trial court should also consider that intent and premeditation may be inferred from minimal circumstantial evidence. *Daniels, supra* at 378.

Here, there was evidence that defendant was angry with Byrd, that defendant left the scene and had time to ponder over the thought of shooting Byrd, that defendant was carrying a deadly weapon and thus had the means to kill, and that defendant approached Byrd with the gun drawn. We find this evidence sufficient to allow an inference of premeditation and malicious intent. Furthermore, despite defendant's contention that he was intoxicated, evidence was presented to support the conclusion that

defendant had control over all his faculties. The jury properly exercised its option to believe this evidence over defendant's own contention that he was almost entirely unaware of what had happened. *Chamblis, supra* at 420, 422. The court did not err in instructing the jury on the crime of first-degree murder, and, because the evidence warranted the instruction, any concern about a compromise verdict is unfounded. *People v Vail*, 393 Mich 460, 465; 227 NW2d 535 (1975).

IV

Finally, defendant argues that he was denied effective assistance of counsel because his trial attorney failed to move for a directed verdict of acquittal for the murder charge, allowed the charge of first-degree murder to go to the jury without objection, failed to object to the jury instruction regarding the doctrine of transferred intent, and failed to request jury instructions on the lesser offenses of involuntary manslaughter and reckless discharge of a weapon. We disagree. Initially, we note that defendant failed to properly preserve this issue for appellate review. We nevertheless find that, in each instance, the action that defendant suggests counsel should have taken would have been futile. Therefore, defendant has failed to overcome the presumption that he was afforded effective assistance of counsel. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994), cert den sub nom *People v Caruso*, 513 US __; 115 S Ct 923; 130 L Ed 2d 802 (1995).

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Richard A. Bandstra