STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT K. PRICE,

Defendant-Appellant.

UNPUBLISHED
March 7, 1997

No. 182576
Kent Circuit Court
LC No. 94-000842-FC

Before: Reilly, P.J., and MacKenzie and B.K. Zahra*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797, 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). He was also convicted of being an habitual offender, third offense, MCL 769.11; MSA 28.1083. Defendant was sentenced to concurrent terms of twenty to forty years' imprisonment and twenty-five to forty-five years' imprisonment, respectively, for the armed robbery and assault with intent to murder convictions, to be served consecutively to a mandatory two years' imprisonment for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant first argues that the trial court erred in admitting statements made by his non-testifying accomplice which implicated defendant in the crime. We find no abuse of discretion. *People v McElhaney*, 215 Mich App 269, 280; 545 NW2d 18 (1996). Because the statements at issue inculpated both defendant and his accomplice (the declarant), the threshold question in determining admissibility is whether the circumstances under which the statements were made vouch for their reliability. *People v Spinks*, 206 Mich 488, 491-492; 522 NW2d 875 (1994), citing *People v Poole*, 444 Mich 151, 157; 506 NW2d 505 (1993). Unlike *Spinks*, *supra*, the statements in this case were not the product of custodial interrogation and were not motivated by a desire to curry favor with the authorities. Instead, the record indicates that the accomplice willingly made the statements to his girl friend immediately after the incident, to explain why he was out of breath and nervous. The statements

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

were made in the confines of the accomplice's own home, and the only prompting was his girlfriend's question about what happened in connection with the shooting. The statement did not minimize the declarant's role; he stated that he, not defendant, shot the victim during the course of a robbery. Under the totality of these circumstances, we conclude that the statements were reliable, thereby satisfying the Confrontation Clause, US Const, Am VI; Const 1963, art 1, § 20. The trial court did not abuse its discretion in admitting this evidence. *Poole, supra* pp 165-166.

Defendant also argues that insufficient evidence was produced at trial to support his conviction for assault with intent to commit murder. Specifically, defendant claims that insufficient evidence was produced to prove that defendant intended to kill the victim. We disagree.

Conflicting testimony was presented at trial as to whether defendant or his accomplice actually did the shooting. However, the jury was free to believe either version of the facts and, in either case, the evidence indicated that the victim was shot twice in the abdomen at close range during the commission of a robbery. Intent may be inferred by all the facts and circumstances, *People v Safiedine*, 163 Mich App 25, 29; 414 NW2d 143 (1987); *People v Daniels*, 163 Mich App 703, 706; 415 NW2d 282 (1987), and 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). The use of a lethal weapon will support an inference of an intent to kill. *People v Ray*, 56 Mich App 610, 615; 224 NW2d 735 (1974). An intent to kill can also be inferred from conduct the natural tendency of which is to cause death or great bodily harm. *People v Eisenberg*, 72 Mich App 106, 114; 249 NW2d 313 (1976). Under the circumstances of this case, we therefore conclude that, viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find that both the shooter and the person who suggested using a gun had the intent to kill the victim. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Defendant also claims that the trial court erred in instructing the jury, and in allowing fingerprint evidence. Defendant failed to preserve either of these claims for appellate review. After careful consideration of the record, we conclude that manifest injustice will not result from our failure to review these claims. *People v Ullah*, 216 Mich App 669, 676; 550 NW2d 568 (1996); *People v King*, 210 Mich App 425; 534 NW2d 534 (1995).

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Barbara B. MacKenzie
/s/ Brian K. Zahra