STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 1, 1999
v	No. 209506 Recorder's Court
KARLOS R. WELLS, Defendant-Appellant.	LC No. 97-005729

Before: Whitbeck, P.J., and Saad and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from convictions for second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b(1); MSA 28.424(2)(1), for which he was sentenced to consecutive prison terms of eighteen to thirty years and two years, respectively. We affirm.

I

Defendant first argues that the prosecutor failed to present sufficient evidence to support his second-degree murder conviction. We disagree.

In reviewing the sufficiency of the evidence in a criminal case, we review 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 proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). "Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997).

Here, the evidence was sufficient to support defendant's conviction. "The elements of second-degree murder are: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). "Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death

or great bodily harm." *Id*. at 464. Malice may be inferred from all the facts and circumstances of the killing, *People v Kemp,* 202 Mich App 318, 322; 508 NW2d 184 (1993), including the use of a deadly weapon, *People v Turner,* 213 Mich App 558, 567; 540 NW2d 728 (1995), and "evidence that a defendant intentionally set in motion a force likely to cause death or great bodily harm." *People v Flowers,* 191 Mich App 169, 177; 477 NW2d 473 (1991).

According to testimony at the trial, the victim was unarmed, standing on his front porch, and talking to two of defendant's friends when defendant aimed his gun toward the porch and fired several times, hitting the victim in the head. We can reasonably infer that, in shooting the gun, defendant acted in wanton and wilful disregard of the likelihood that the natural tendency of his behavior was to cause death or great bodily harm. Defendant denies that we can draw such an inference when the actor is a minor, but he has effectively abandoned this argument by failing to cite any supporting authority. *People v Piotrowski,* 211 Mich App 527, 530; 536 NW2d 293 (1995). Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant committed second-degree murder.

II

Defendant next argues that the trial court erred in denying his motion to suppress his statement to police. We disagree.

In reviewing a trial court's determination of the voluntariness issue, we examine the entire record and make an independent determination. *People v Gould,* 225 Mich App 79, 88; 570 NW2d 140 (1997). We consider whether the confession was the product of an essentially free and unconstrained choice or whether the defendant's will was overborne and his capacity for self-determination was critically impaired. *People v Givans,* 227 Mich App 113, 120-121; 575 NW2d 84 (1997). The trial court's findings of fact will not be disturbed unless they are clearly erroneous. *People v LoCicero (After Remand),* 453 Mich 496, 500; 556 NW2d 498 (1996). To the extent that resolution of disputed factual questions turns on the credibility of witnesses or the weight of the evidence, this Court ordinarily defers to the trial court. *People v Marshall*, 204 Mich App 584, 587; 517 NW2d 554 (1994).

Here, defendant claims his statement was coerced. Specifically, he maintains that he was not properly advised of his *Miranda* rights[1] and that the interviewing detective promised lenient treatment if defendant confessed. The detective testified to the contrary, claiming that he informed defendant of his rights and that defendant claimed to have understood them. Defendant was questioned only once and the entire process appears to have taken no more than a couple hours. There is no evidence that defendant was in other than good mental and physical health or was deprived of food, drink, sleep or medical attention. The detective specifically denied making any threats or promises to induce the statement and, during questioning, defendant admitted that he made the statement of his own will and had not been forced or threatened by the detective or anybody else. Under the totality of the circumstances, the trial court's factual findings are not clearly erroneous. This case came down to a credibility contest between defendant and the detective. The trial court resolved the matter in the

detective's favor, and defendant has offered no basis on which we can second-guess that determination. In light of those findings, we conclude that defendant's statement was voluntarily made.

III

Finally, defendant argues that the trial court erred in scoring offense variable three of the sentencing guidelines and that his sentence is disproportionate. Again, we disagree.

The trial court has discretion in determining the number of points to be scored, provided there is evidence on the record—including the contents of the presentence investigation report and testimony taken at trial—that adequately supports the score. "This Court will affirm a sentencing court's scoring decision where there is evidence existing to support the score." *People v Haacke*, 217 Mich App 434, 435; 553 NW2d 15 (1996). We only review sentencing decisions made under the guidelines "where (1) a factual predicate is wholly unsupported, (2) a factual predicate is materially false, and (3) the sentence is disproportionate." *People v Mitchell*, 454 Mich 145, 177; 560 NW2d 600 (1997).

The trial court scored twenty-five points for OV 3, which considers the defendant's intent to kill or injure. The guidelines permit a score of twenty-five points where the defendant acted with the malice required to prove second-degree murder and a score of ten points where circumstances reduce the killing to voluntary or involuntary manslaughter. A score of ten points is also authorized if the killing is intentional within the definitions of murder second-degree or voluntary manslaughter but the death occurred in a combative situation or in response to victimization of the offender by the decedent. We find no basis for reducing the killing to manslaughter, and there is no evidence that defendant was fighting with or had been victimized by the decedent. To the contrary, the evidence showed that defendant acted with malice sufficient to support his second-degree murder conviction, i.e., he intended to "do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Goecke, supra* at 464. There being no basis for a score of ten points, the trial court properly scored defendant at twenty-five points for OV 3.

Defendant's sentence falls squarely within the minimum sentence range of the guidelines and is thus presumed proportionate absent unusual circumstances. *People v Lyons (After Remand)*, 222 Mich App 319, 324; 564 NW2d 114 (1997). Defendant has not identified any unusual circumstances save his age. Because he has not cited any authority in support of his contention that youth alone is sufficient to render an otherwise proportionate sentence disproportionate, he has effectively abandoned this issue. *Piotrowski, supra*. Therefore, we find that the trial court did not abuse its discretion in imposing defendant's sentence. *Castillo, supra* at 447.

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Joel P. Hoekstra

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).