STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FLOYD STANLEY BROWNING, JR.,

Defendant-Appellant.

UNPUBLISHED
December 13, 2002

No. 233165
St. Clair Circuit Court
LC No. 00-002132-FC

Before: Jansen, P.J., and Holbrook, Jr., and Cooper, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b, arising from the fatal shooting of the boyfriend of defendant's sister. Defendant was sentenced to sixteen years and eight months to twenty-five years' imprisonment for the murder conviction, consecutive to the mandatory term of two years' imprisonment for the felony-firearm conviction. He now appeals as of right. We affirm.

Defendant first argues that his conviction for second-degree murder must be reversed because the trial court erred in denying his motion for a directed verdict based upon the insufficiency of the evidence. When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt. *People v Mayhew*, 236 Mich App 112, 124-125; 600 NW2d 370 (1999). The same standard of review applies to a general challenge to the sufficiency of the evidence. See *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994); *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998). On appeal, defendant concedes that he shot the victim, but claims that the evidence did not support the finding that he acted with the malice required for second-degree murder. We disagree.

Malice "is defined as 'the intent to kill, the intent to cause great bodily harm, or the intent 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.'" *Mayhew, supra* at 125, quoting *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998). In this case, there was sufficient evidence that defendant acted with a wanton disregard that the likely consequences of his action would result in death or serious injury. Specifically, Keith Anderson testified that shortly before the fatal shooting, defendant, who was intoxicated, had encouraged him to shoot at a neighbor's

door, and that when the victim complained about scratching his car, defendant replied, "Man, I'll blow your chest out." According to Anderson, defendant held the gun's barrel against the victim's person just before the shooting, and there was no struggle for possession of the gun. Anderson further testified that just after the shooting, defendant "told me I was next or something" and said to the victim, "get up and I'll shoot your ass again." In addition, defendant admitted that after the shooting he dropped the gun and fled the scene. Viewed in the light most favorable to the prosecutor, a rational trier of fact could have concluded that the element of malice was established beyond a reasonable doubt. *Mayhew*, *supra*.

Defendant also challenges his sentence for second-degree murder. In this case, defendant's sentence of sixteen years and eight months to twenty-five years' imprisonment fell within the recommended minimum sentence range of 225 to 375 months' imprisonment.[1] Under MCL 769.34(10), a minimum sentence within the guidelines range must be affirmed absent an error in scoring the guidelines or reliance upon inaccurate information in the sentencing process. In this case, defendant neither challenges the scoring of the guidelines nor the information relied upon by the sentencing court. Rather, defendant contends that the trial court abused its discretion in refusing to depart downward from the recommended minimum sentence range of the applicable sentencing guidelines when imposing defendant's minimum sentence for second-degree murder. We disagree.

Under MCL 769.34(3), a sentencing court may deviate from the recommendation under the legislative guidelines only for a "substantial and compelling reason . . . ." This language, in light of its statutory and case-law history, reflects a legislative intent that deviations from the recommended range follow only from objective and verifiable factors. *People v Babcock*, 244 Mich App 64, 74-78; 624 NW2d 479 (2000). In this case, defendant presents no specific reason that is substantial, compelling, objective, and verifiable to justify a downward departure from the minimum sentence recommended under the guidelines.

Finally, defendant argues that he is entitled to a new trial on the ground that the verdict was the result of racial animus on the part of the jury. Here, defendant's unqualified expression of satisfaction with the jury as seated affirmatively waived any jury-selection issues. *People v Carter*, 462 Mich 206, 214-219; 612 NW2d 144 (2000); *People v Clark*, 243 Mich App 424, 426; 622 NW2d 344 (2000).

Affirmed.

/s/ Kathleen Janen
/s/ Donald E. Holbrook, Jr.
/s/ Jessica R. Cooper

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[1] Because the conduct for which defendant was convicted occurred after January 1, 1999, the legislative sentencing guidelines, enacted pursuant to MCL 769.34, were used to determine the recommended range of defendant's minimum sentence.