

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHANDRE HUSSUNG,

Defendant-Appellant.

UNPUBLISHED

August 26, 2008

No. 278615

Wayne Circuit Court

LC No. 07-003846-01

Before: Cavanagh, P.J., and Jansen and Kelly, JJ.

MEMORANDUM.

Defendant appeals by right his jury-trial convictions of second-degree murder, MCL 750.317, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

Defendant argues that the evidence presented at trial was insufficient to support his conviction of second-degree murder because the prosecution failed to establish beyond a reasonable doubt the element of malice. We disagree.

We view the evidence de novo in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992). Questions of credibility and intent should be left to the trier of fact, and will not be resolved anew on appeal. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999); *People v Queenan*, 158 Mich App 38, 55; 404 NW2d 693 (1988). All evidentiary conflicts must be resolved in favor of the prosecution. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2000).

After a confrontation between defendant and some other men at a restaurant on Detroit's east side, the victim allegedly hit defendant. Defendant then fired his gun, striking the victim in the chest. The prosecution presented evidence tending to show that defendant intended to fire the gun, that only a few feet separated defendant and the victim at the time of the shooting, and that defendant then chased the victim and others out of the restaurant and fired another shot. No other weapons were seen by any of the witnesses. The prosecution also presented evidence that defendant had an opportunity to leave the restaurant before the confrontation, but did not do so.

“Malice for second-degree murder can be inferred from evidence that the defendant ‘intentionally set in motion a force likely to cause death or great bodily harm.’” *People v Aldrich*, 246 Mich App 101, 123; 631 NW2d 67 (2001), quoting *People v Djordjevic*, 230 Mich App 459, 462; 584 NW2d 610 (1998). In *Aldrich*, the intoxicated defendants engaged in drag racing at very high speeds on a public roadway. The *Aldrich* Court found that while the defendants had not specifically intended to kill, the element of malice was met because sufficient evidence was presented to establish that the defendants intended an act that was likely to cause death or great bodily harm.

We similarly find that defendant in the present case “‘intentionally set in motion a force likely to cause death or great bodily harm.’” *Aldrich, supra* at 123, quoting *Djordjevic, supra* at 462. As in *Aldrich*, defendant intended an act—firing the gun at the victim—which was likely to cause death or serious bodily harm. Viewing the evidence in a light most favorable to the prosecution, and deferring to the finder of fact on matters of witness credibility, we conclude that sufficient evidence was presented at trial to support defendant’s conviction of second-degree murder.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly