

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD DUANE HILL,

Defendant-Appellant.

UNPUBLISHED
September 30, 2010

No. 292810
Wayne Circuit Court
LC No. 06-010464

Before: MURPHY, C.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for second-degree murder, MCL 750.317, three counts of assault with intent to murder, MCL 750.83, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to 50 to 80 years' imprisonment for the second-degree murder conviction, 40 to 70 years' imprisonment for each of the three counts of assault with intent to murder, two years' imprisonment for the felon in possession conviction, and two years' imprisonment for the felony-firearm conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that there was insufficient evidence to sustain his convictions. We disagree.

When reviewing a challenge to the sufficiency of evidence in a bench trial, this Court reviews de novo and in a light most favorable to the prosecution. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). “[A] court must . . . determine whether any 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; 489 NW2d 748 (1992). Nevertheless, “[t]his Court will not interfere with the trier of fact’s role of determining the weight of the evidence or the credibility of witnesses. Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime.” *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007).

Defendant challenges his convictions for second-degree murder, MCL 750.317, as well as three counts of assault with intent to murder, MCL 750.83.¹ We will first address defendant's challenge to his conviction for second-degree murder. In *People v Smith*, 478 Mich 64, 70; 731 NW2d 411 (2007), the Court stated, "the elements of second-degree murder are as follows: (1) a death, (2) the death was caused by an act of the defendant, (3) the defendant acted with malice, and (4) the defendant did not have lawful justification or excuse for causing the death."

Defendant argues that he acted under the influence of passion and, therefore, did not have the intent necessary to commit second-degree murder or assault with intent to murder. His anger after witnessing the beating of his brother drove him blindly to shoot the people in the store, specifically, Anthony Furlow. He argues that his actions more likely constitute manslaughter than murder. We disagree.

Defendant's actions meet the elements of second-degree murder. He does not contest three of the four elements of the crime. He agrees that a death occurred due a gunshot that he fired and that he has offered no legal excuse for shooting the weapon. On appeal, defendant alleges that the prosecution failed to establish the element of malice. In *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998), the Court held, "[m]alice 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." Under *People v Warren*, 200 Mich App 586, 588; 504 NW2d 907 (1993), "[t]he intent to kill may be proven by inference from any facts in evidence." According to Furlow's testimony, defendant saw him in the convenience store and shot him in the back as Furlow attempted to retreat. In addition to Furlow, three other individuals were struck with bullets. After the shooting, defendant left the store. The evidence supports a finding that defendant intended to shoot Furlow when he fired the gunshots that struck Waller. Under the doctrine of transferred intent, defendant's shooting of Furlow with the requisite intent transfers to the shooting of Waller. As has been explained, "the doctrine of transferred intent . . . provides: 'Where one intends to assault a certain person, but by mistake or accident assaults a different person, the crime so committed, if any, is the same as though the person originally intended to be assaulted had been assaulted.'" *People v Hurse*, 152 Mich App 811, 813; 394 NW2d 119 (1986), quoting Criminal Jury Instruction 17:1:05. Under this doctrine, defendant's intent to shoot Furlow with malice transferred to his accidental shooting of Waller, and thereby satisfies the malice element of second-degree murder.

In addition to intent to kill, defendant's malice is evidenced, at a minimum, by his clear "disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Goecke*, 457 Mich at 464. At the time of the shooting, the party store was full. Defendant's decision to shoot a weapon in a crowded party store disregarded the likelihood that others would be injured in his attempt to shoot Furlow. Consequently, this evidence satisfies the malice necessary for second-degree murder.

¹ Defendant does not contest his convictions for felon in possession of a firearm and felony-firearm.

Defendant's actions also meet the requirements for all three counts of assault with intent to commit murder. In *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005), the Court stated, "[t]he elements of assault with intent to commit murder are: '(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder.'" First, Furlow, Angela Barnes, and Angia Barnes were assaulted. All three sustained gunshot wounds of varying severity. Second, for all the reasons stated above, defendant had an actual intent to kill. While it appears that neither Angela nor Angia were targets, under the doctrine of transferred intent, defendant's intent to kill Furlow transfers to each of his victims. Third, had defendant been successful, his actions would have constituted murder.

Defendant argues that his actions were out of passion, and therefore, constitute manslaughter, and not second-degree murder. In *People v Roper*, 286 Mich App 77, 87; 777 NW2d 483 (2009), the Court stated that, "[v]oluntary manslaughter requires a showing that (1) defendant killed in the heat of passion, (2) this passion was caused by an adequate provocation, and (3) there was no lapse of time during which a reasonable person could have controlled his passions." The court "furnishes the standard of what constitutes adequate provocation, i.e., that provocation that would cause a reasonable person to act out of passion rather than reason." *People v Sullivan*, 231 Mich App 510, 518; 586 NW2d 578 (1998). While defendant argues that watching his younger brother be beaten is adequate provocation for the shooting, this question is left to the fact finder. *Id.*

Furthermore, under *Roper*, the third element of manslaughter requires that there be no lapse of time during which a reasonable person could have controlled his passions. While it is difficult to pinpoint exactly how much time must lapse for a reasonable person to control their passions, in *People v Pouncey*, 437 Mich 382, 392; 471 NW2d 346 (1991), the Court found that sufficient "cooling-off" time had passed when:

the defendant went into the house, a safe harbor [following the incident]. There was no evidence that the defendant was compelled to go back outside by anyone. The defendant could have stayed in the house . . . Instead, the defendant chose to retrieve the shotgun from a closet in the back of the house and chose to go back outside.

In the present case, defendant dispersed with the group after the fight in the party store parking lot. An hour and 12 minutes later, he returned to the party store, gun in hand. As in *Pouncey*, defendant left the scene of the argument, and returned by his own volition. Enough time had lapsed between the argument and the shooting for a reasonable person to have controlled his passions. Accordingly, there was sufficient evidence for a rational trier of fact to find defendant guilty beyond a reasonable doubt of second-degree murder and three counts of assault with intent to murder.

Affirmed.

/s/ William B. Murphy
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens