

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

TRAVON LAMAR DIXON,

Defendant-Appellant.

UNPUBLISHED

November 16, 2010

No. 292130

Oakland Circuit Court

LC No. 2008-221668-FC

Before: SERVITTO, P.J., and ZAHRA and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of second-degree murder, MCL 750.317. Defendant was sentenced to 22 ½–50 years' imprisonment for the conviction. Because there was sufficient evidence to convict defendant of second-degree murder, we affirm.¹

This case arises out of the shooting death of William Spearman on April 6, 2008. Spearman, along with defendant and several others, were gathered in an abandoned apartment building to gamble, drink, and ingest various illegal substances. During the course of the evening, Spearman and defendant became involved in an argument. Spearman's girlfriend, Genee Fulbright, witnessed Spearman shove defendant and defendant push him back. Fulbright left the room and, as she was walking away, heard a single gunshot. She returned to the room to see Spearman slump face down onto the floor. When she began screaming, defendant pointed a gun in her face and told her to stop or he would shoot her in the face. Everyone fled the apartment except Fulbright, who remained with Spearman until the police arrived. Spearman died from a single gunshot wound to his chest.

On appeal, defendant asserts that there was insufficient evidence to convict him of second-degree murder. We disagree.

¹ Though also convicted of felonious assault, MCL 750.82, defendant does not challenge that conviction.

We review a defendant's claim of insufficient evidence de novo, examining the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). This Court will not, however, "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).

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." *People v Smith*, 478 Mich 64, 70; 731 NW2d 411 (2007). On appeal, defendant alleges only that the prosecution failed to establish the element of malice; he does not claim that the remaining three elements of second-degree murder were not established.

Malice, for purposes of murder, 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." *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998). "Malice may be inferred from evidence that the defendant intentionally set in motion a force likely to cause death or great bodily harm." *People v Roper*, 286 Mich App 77, 84; 777 NW2d 483 (2009) (internal quotation omitted). Malice may also be inferred from the use of a deadly weapon. *People v Carines*, 460 Mich 750, 759; 597 NW2d 130 (1999). Second-degree murder does not require an actual intent to harm or kill, but only the intent to do an act that is in obvious disregard of life-endangering consequences. *Roper*, 286 Mich App at 84.

We are satisfied that defendant's actions meet the requirements of malice for purposes of his second-degree murder conviction. Fulbright (Spearman's girlfriend) testified that the only people present in the room with Spearman at the time the gun went off were defendant and another individual, who was passed out from alcohol and drug ingestion. Fulbright also testified that Spearman and defendant were arguing and shoving each other just prior to the gunshot, and that just after the gunshot, defendant pointed a gun in her face and threatened to shoot her. LaShonda McCoy testified that she spoke to defendant several hours after the incident to inform him that Spearman had died, and that defendant said Spearman should not be dead, just paralyzed as he had shot him in the leg or stomach. From the above, it can be inferred that defendant possessed a gun and fired that gun at Spearman. Defendant's action in pulling the trigger of a weapon pointed at Spearman or in his direction represents an obvious disregard of life-endangering consequences. *Carines*, 460 Mich at 759; *Roper*, 286 Mich App at 84. Viewing the evidence in the light most favorable to the prosecution, then, a rational trier of fact could find that the element of malice was proven beyond a reasonable doubt.

Defendant initially challenged his sentence but has since waived that issue by withdrawing his motion for resentencing, and through counsel's affirmative assertion that it was the intent that such withdrawal serve as a waiver of any sentencing challenge. Thus we need not consider the remaining issues set forth in defendant's appellate brief.

Affirmed.

/s/ Deborah A. Servitto

/s/ Brian K. Zahra

/s/ Pat M. Donofrio