

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SIDNEY CARNELL McKINNEY,

Defendant-Appellant.

UNPUBLISHED

November 19, 1996

No. 180711

LC No. 94-67567-FC

Before: Holbrook, Jr., P.J., and Saad and W.J. Giovan,* JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree murder, MCL 750.317; MSA 28.549, and was sentenced to serve 20 to 40 years in prison. He appeals as of right and we affirm.

Defendant claims that insufficient evidence was presented at trial to support his conviction of second-degree murder. We disagree. In reviewing a claim that the evidence was insufficient to support a finding of guilt, this Court views the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the offense were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

The elements of second-degree murder are (1) a death, (2) caused by the defendant, (3) with malice, and (4) without justification or excuse. *People v Porter*, 169 Mich App 190, 192; 425 NW2d 514 (1988). Malice is a mental state consisting of the intent to kill, the intent to do great bodily harm, or the intent to create a high risk of death or great bodily harm with knowledge that such harm is the probable result. *People v Miller*, 198 Mich App 494, 497; 499 NW2d 373 (1993).

Here, because there were no witnesses to the incident other than defendant, the jury was allowed to infer his intent from all the circumstances. *People v Flowers*, 191 Mich App 169, 176; 477 NW2d 473 (1991). At trial, medical testimony indicated that the victim suffered seven stab wounds, of which at least two were inflicted with enough force to penetrate her rib cage, and another stab wound

* Circuit judge, sitting on the Court of Appeals by assignment.

that entered from her back. Moreover, the wounds appeared to have been inflicted with a pocket knife that was seized from defendant's pocket at the scene. The evidence also established that defendant failed to take advantage of more than one opportunity to call for an ambulance, and that after his friend summoned medical assistance defendant shouted profanities at the victim as well as his desire that she would die from her injuries. Although defendant claimed that the victim had initially attacked him, no bruises or other injuries were found on defendant. The pathologist who conducted the autopsy on the victim could not say whether the injuries and bruises on her hands were defensive wounds. Finally, although there was evidence that defendant had been drinking that evening, voluntary intoxication is not a valid defense to second-degree murder. *People v Langworthy*, 416 Mich 630, 652; 331 NW2d 171 (1982). Viewing this evidence in a light most favorable to the prosecution, we conclude that sufficient evidence was presented to support defendant's conviction of second-degree murder.

Defendant also challenges the trial court's decision to score five points on Offense Variable 7, offender exploitation of victim vulnerability. Appellate review of guidelines calculations is very limited and will not be disturbed by this Court where record evidence exists to support the score. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993). Here, the evidence supports an inference that defendant exploited the victim through a difference in stature, strength, and agility, resulting in multiple stab wounds to the victim. Thus, we conclude that record evidence supports the score of five points. Nonetheless, even assuming the score was erroneous, defendant concedes that a reduction of the score to zero would not change the guidelines calculation. Therefore, if there was error, it was harmless. *People v Ratkov (After Remand)*, 201 Mich App 123, 127; 505 NW2d 886 (1993).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Henry W. Saad

/s/ William J. Giovan