

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES CADE,

Defendant-Appellant.

UNPUBLISHED

March 14, 1997

No. 186819

Recorder's Court

LC No. 94-013368

Before: Reilly, P.J., and Wahls and N.O. Holowka,* J.

PER CURIAM.

Defendant appeals by right from his bench trial convictions of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to two years in prison for the felony firearm conviction and to a consecutive prison term of fifteen to thirty years for the second-degree murder conviction. We affirm.

Defendant first argues that the trial court's findings of fact were insufficient. We disagree. In a bench trial, the trial court must find the facts and state separately its conclusions of law as to contested matters. MCR 2.517(A)(1), MCR 6.403; *People v Feldmann*, 181 Mich App 523, 534; 449 NW2d 692 (1989). The findings and conclusions as to contested matters are sufficient if brief, definite, and pertinent, without over-elaboration of detail or particularization of facts. MCR 2.517(A)(2); *People v Lewis*, 168 Mich App 255, 268; 423 NW2d 637 (1988). Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). We find that the trial court's findings of fact were sufficient in this case. The trial court found and stated the elements necessary to find defendant guilty of second-degree murder.

Defendant next argues that there was insufficient evidence to support the trial court's findings of fact and subsequent conviction of second-degree murder. We disagree. To establish second-degree

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

murder, the prosecution must show that defendant caused the death of another and that the killing was done with malice and without legal justification. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993). In this case, there was sufficient evidence to establish second-degree murder. As to the first element, that defendant caused the death of another, a witness testified that he saw defendant with a gun. Defendant was swinging the gun at the victim. The next thing the witness heard was a gunshot. The victim was found dead from a gunshot wound. Witnesses testified that they never saw the victim with a weapon or make any kind of grab for the gun. From this evidence, the trial court could properly find that the defendant shot and killed the victim. Secondly, malice was established. Malice is defined as the intent to kill, intent to do great bodily harm, or intent to create a high risk of death or great bodily harm with knowledge that death or great bodily harm will be a probable result. *Id.* Intent may be inferred from the circumstances by the trier of fact. *People v Flowers*, 191 Mich App 169, 178; 477 NW2d 473 (1991). Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient. *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984). In this case, there was evidence of a confrontation between defendant and the victim. Following the confrontation, defendant went home, got a gun, and returned to the scene. A witness heard defendant argue with the victim and saw defendant jump out of his truck, grab a shotgun, and swing the gun at the victim. From this evidence, the trial court could properly conclude that defendant had the intent to create a high risk of death or great bodily harm with knowledge that death or great bodily harm will be a probable result. Defendant denied, however, that he had the intent to kill. Defendant claimed that he did not know that the gun was loaded. The trial court did not believe defendant's testimony. We will not disturb this finding because questions of credibility and intent should be left to the trier of fact to resolve. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). Lastly, defendant had no legal justification for the killing. Regardless of what the victim did or said during the previous encounter, it was defendant who went home, retrieved a gun, and confronted the victim.

Defendant next argues that it was clear error to omit testimony regarding the fingerprints which may or may not have been found on the barrel of the murder weapon. We disagree. There is no indication in the record that the shotgun was dusted for fingerprints, that the prosecutor or defendant had fingerprint evidence, or that the issue was raised in any way as an issue at trial. Defendant is raising the issue for the first time on appeal. Consequently, we will not address the issue.

Lastly, defendant argues that his sentence is disproportionate. We disagree. The trial court sentenced defendant at the low end of the guidelines range. Sentences that fall within the guidelines range are presumed to be neither excessively severe nor unfairly disparate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v Albert*, 207 Mich App 73, 75; 523 NW2d 825 (1994). Nevertheless, a sentence within a guidelines range can conceivably violate the principle of proportionality in unusual circumstances. *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990). After reviewing the record, we are not convinced that defendant's case involved any such unusual circumstances that mandated that the trial court depart from the guidelines. The trial court did not abuse its discretion in sentencing defendant.

Affirmed.

/s/ Maureen Pulte Reilly

/s/ Myron H. Wahls

/s/ Nick O. Holowka