

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES ROY ROBERT OLSON,

Defendant-Appellant.

UNPUBLISHED

December 11, 2003

No. 241806

Saginaw Circuit Court

LC No. 01-020360-FC

Before: Whitbeck, C.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Defendant Charles Olson appeals as of right from his jury trial convictions of second-degree murder,¹ carrying a concealed weapon,² and possession of a firearm during the commission of a felony.³ The trial court sentenced Olson to 22 to 33 years' imprisonment for second-degree murder, 3 to 5 years' imprisonment for carrying a concealed weapon, and 2 years' imprisonment for felony-firearm. We affirm.

I. Basic Facts And Procedural History

This case arose out of the fatal shooting of Michael Cook at 707 North Harrison in Saginaw. On May 25, 2001, according to resident Evelyn Allison, there were several persons at that address drinking beer and waiting to go to a party. At some point, David Green arrived and accused the people there of having taken his shotgun. Green left but returned approximately forty-five minutes later, with Olson and others. Green became involved in an argument with Billy Ray Jamerson and Jamerson and Green exchanged racial slurs, then began to throw beer bottles at each other.

Jeffrey Davis testified that, a short time later, Olson reached into the passenger seat of the vehicle and retrieved a pistol. According to Davis, Olson was raising and lowering the gun, pointing it at Jamerson and Detterian Jones. Davis testified that Olson's first shot went into the

¹ MCL 750.317.

² MCL 750.227.

³ MCL 750.227b.

ground and one or two other shots went off to one side, one of which hit Cook. Additional witnesses testified that Olson was pointing his gun toward the group of people. Allison stated that she heard gunshots, felt wind from a bullet burn her cheek, and had her hair singed. Other witnesses testified instead that Olson was shooting into the air, was only firing in the direction of Cook, or was shooting at an angle and then up into the air.

Olson testified that he was intoxicated on the night of May 25, 2001. According to Olson, he went with Green to 707 North Harrison to help Green find his missing shotgun. Olson stated that when they arrived at 707 North Harrison, Green and Jamerson got into an argument and eventually bottles were thrown. Olson testified that he then walked away from the crowd and fired his pistol five times in the air with the intent to scare people away. Olson stated that after firing the gun, he walked around the corner to his friend's house, threw the pistol on top of the house, and hid inside some bushes next to 623 North Harrison. Olson claimed that he first learned of somebody being shot when the police arrested him.

Around 12:00 a.m. on May 26, 2001, Saginaw Police Department Officers Jeffrey Doud and Jeffrey Wenzell, and Sergeant Paul Crane responded to a shooting in the 700 block of North Harrison. On arriving at 707 North Harrison, the officers found Cook lying in the driveway with a gunshot wound to the head. Sergeant Crane searched the neighborhood and found a pair of gloves behind 714 Hayes and a target pistol on top of the roof. Officer Wenzell was then dispatched to 623 North Harrison in response to a complaint that two people were hiding at that address; Olson was found hiding behind some bushes with a female companion.

Daniel Andrews, registered nurse with Mobile Medical Response testified that she was dispatched to 707 North Harrison at about 12:22 a.m. She stated that Cook had an injury to the left side of his head near his ear. Saginaw County medical examiner, Kanu Virani, M.D., testified that he performed an autopsy on Cook. He stated that Cook had sustained a gunshot wound to the upper part of his left ear, with the bullet going from left to right on a horizontal plane. Additionally, Dr. Virani stated that this type of injury could not occur if the shooter was shooting straight up in the air.

Saginaw Police Officer Jeffrey Kaylor testified that he seized five shell casings from 707 North Harrison. He also seized black gloves and a Ruger .22 caliber semi-automatic pistol. Michigan State Police Detective Sergeant Ronald Crichton testified that the five .22 caliber shell casings came from that firearm. At the conclusion of the trial, the jury convicted Olson of second-degree murder, carrying a concealed weapon, and possession of a firearm during the commission of a felony.

II. Sufficiency Of The Evidence

A. Standard Of Review

Olson argues that there was insufficient evidence presented that he acted with the malice required for his second-degree murder conviction. In reviewing the sufficiency of the evidence, this court must view the evidence in the light most favorable to the prosecutor and determine

whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.⁴ This Court resolves all conflicts in favor of the prosecution⁵ and leaves questions of credibility and intent to the trier of fact.⁶

B. Second-Degree Murder

The offense of second-degree murder consists of the following elements: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse.⁷ Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act with wanton and willful disregard of the likelihood that the natural tendency of the act is to cause death or great bodily harm.⁸ Here, as noted above, there was evidence that Olson reached into a vehicle to get his pistol, pointed the pistol at a crowd of people, and then fired five shots. Although Olson testified that he fired the pistol in the air only with the intention to scare people, other witnesses testified that he was pointing the gun at persons in the crowd. In addition, the medical examiner testified that the type of injury Cook sustained could not occur if the shooter was firing straight up into the air.

From the testimony presented at trial, we conclude that a rational trier of fact could have found that Olson aimed his gun at a crowd of people and fired shots at them. The intent to do an act in obvious disregard of life-endangering consequences is a malicious intent.⁹ Malice can also be inferred from the use of a deadly weapon.¹⁰ Therefore, a rational trier of fact could conclude that Olson's discharge of a pistol in the vicinity of a crowd of people constituted the required element of malice for second-degree murder.

III. Sentencing

A. Standard Of Review

Olson claims that the trial court abused its discretion by refusing to grant a downward departure from the sentencing guidelines. If the trial court's sentence is within the appropriate

⁴ *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999); *People v Wolfe*, 440 Mich 508, 513-514; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Hampton*, 407 Mich 354, 366; 285 NW2d 284 (1979).

⁵ *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

⁶ *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

⁷ *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998).

⁸ *Id.* at 464.

⁹ *Id.* at 466.

¹⁰ *People v Carines*, 460 Mich 750, 759; 597 NW2d 130 (1999); *People v Turner*, 213 Mich App 558, 567; 540 NW2d 728 (1995).

guidelines' range, this Court must affirm the sentence unless the trial court erred in scoring the guidelines or relied on inaccurate information in determining the defendant's sentence.¹¹

B. Olson's Sentence

Olson's sentence of 22 years (264 months) falls within the guidelines' range of 225 to 375 months. Therefore, this Court must affirm the sentence unless the trial court erred in scoring the guidelines or relied on inaccurate information. Olson does not argue that the trial court erred in scoring the guidelines or relied on inaccurate information in determining Olson's sentence. In fact, when asked at sentencing if there were any objections to the guidelines' scores, defense counsel stated that there were not. We conclude that the trial court did not err in scoring the guidelines or rely on inaccurate information in determining Olson's sentence.

Affirmed.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Pat M. Donofrio

¹¹ MCL 769.34(10); *People v Babcock*, 469 Mich 247, 261; 666 NW2d 231 (2003).