

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS BERNARD MACK,

Defendant-Appellant.

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UNPUBLISHED

August 2, 2005

No. 253121

Wayne Circuit Court

LC No. 03-009451-01

Before: Borrello, P.J., and Bandstra and Kelly, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial convictions for voluntary manslaughter, MCL 750.321, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

We review de novo a challenge to the sufficiency of the evidence in a bench trial in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

“The elements of voluntary manslaughter are (1) the defendant must kill in the heat of passion, (2) the passion must be caused by an adequate provocation, and (3) there cannot be a lapse of time during which a reasonable person could control his passions.” *People v Sullivan*, 231 Mich App 510, 518; 586 NW2d 578 (1998).

Defendant argues that the evidence is insufficient to sustain his manslaughter conviction because the first element, i.e., that he killed the victim, was not proved beyond a reasonable doubt. We disagree. It is undisputed that the victim was killed with a .25 caliber bullet that could not be traced to defendant’s .25 caliber gun because that weapon was inoperable when it was recovered. It is also undisputed that defendant was armed with the .25 caliber gun, as well as a .22 caliber gun on the night of the incident. Defendant admitted that he “used both” guns, but contended that the .25 caliber gun jammed. Although defendant’s neighbor also fired shots, most witnesses agreed that he only fired shots up in the air. The only evidence that defendant’s

neighbor shot toward the corner came from defendant's first statement, which was admittedly not completely truthful, and from defendant's daughter, whose testimony was thoroughly impeached. All other witnesses agreed that defendant was the only person firing from the street towards the youths at the corner. Two .25 caliber shell casings were found in the street. Viewing the evidence in a light most favorable to the prosecution, the trial court could have found beyond a reasonable doubt that defendant fired the fatal shot.

We affirm.

/s/ Stephen L. Borrello  
/s/ Richard A. Bandstra  
/s/ Kirsten Frank Kelly