STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMARION WILSON,

Defendant-Appellant.

UNPUBLISHED
September 17, 2009

No. 285970
Wayne Circuit Court
LC No. 06-009914

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

PER CURIAM.

Defendant pleaded guilty to second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b, for which we was sentenced to 13-½ to 70 years' imprisonment and two years' consecutive imprisonment, respectively. He appeals by leave granted. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erred in accepting his plea because there was an insufficient factual basis on the record to support a finding of malice for purposes of the murder conviction, and that his plea was not voluntarily, understandingly, and accurately offered. See MCR 6.302; *People v Jaworski*, 387 Mich 21, 29; 194 NW2d 868 (1972); *People v Thew*, 201 Mich App 78, 95; 506 NW2d 547 (1993).

However, defendant did not address preservation of the issues in his brief on appeal, see MCR 7.212(C)(7), and our own review of the lower-court record did not reveal any indication that defendant filed a motion to withdraw his plea in trial court, see MCR 7.103(B)(6), or for relief from judgment, see MCR 6.502. When a criminal defendant persuades a trial court to accept his guilty plea, then puts forward no motion to withdraw that plea before that court, or one for remand in this Court for that purpose, this Court has deemed the question of withdrawal waived. *People v Kaczorowski*, 190 Mich App 165, 172-173; 475 NW2d 861 (1991); MCR 6.310(D).

Even if we consider the merits of defendant's claim, because the issue is unpreserved, our review for plain error affecting substantial rights brings no error to light. See *People v Carines*, 460 Mich 750, 762-766; 597 NW2d 130 (1999).

> A factual basis to support a plea exists if an inculpatory inference can be drawn from what the defendant has admitted. This holds true even if an exculpatory inference could also be drawn and the defendant asserts that the latter is the correct inference. Even if the defendant denied an element of the crime, the court may property accept the plea if an inculpatory inference can still be drawn from what the defendant says. [*People v Jones*, 190 Mich App 509, 511-512; 476 NW2d 646 (1991) (citations omitted).]

Defendant argues that there is no evidence of malice, i.e., intent to kill, because defendant stated that it was an accident, that his finger slipped, and that he did not want to hurt the victim. However, "[t]he intent to kill may be implied where the actor actually intends to inflict great bodily harm, *or the natural tendency of his behavior is to cause death or great bodily harm*." *People v Haack*, 396 Mich 367, 376; 240 NW2d 704 (1976) (citations and quotations omitted; emphasis added). Defendant admitted to shooting the victim while intoxicated from drugs and alcohol. He testified that he was clumsily handling a shotgun at waist height with his finger on the trigger and that he knew the shotgun was loaded. These actions created a high risk of death. Defendant also admitted to knowing that the handling of a shotgun was dangerous, particularly if it was loaded. Defendant thus described acting with a "wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm" from which a jury could have inferred malice. See *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998); *People v Rashid*, 154 Mich App 762, 764-765; 398 NW2d 525 (1986). The fact that the evidence could support the exculpatory inference of an accident does not prevent finding a factual basis for a plea where the evidence also supports the inculpatory inference that defendant acted with malice. *Jones*, *supra*.

The fact that defendant denied knowing that his actions created a high degree of likelihood that death or injury would result is not controlling. Second-degree murder is a general intent crime to which voluntary intoxication is not a defense, such that, "[o]nly a highly unusual case would require a determination of the issue whether the defendant was subjectively aware of the risk created by his conduct." *Goecke*, *supra* at 464-465. "The intent to do an act in obvious disregard of life-endangering consequences is a malicious intent." *Id.* at 466. Defendant's careless handling of a loaded weapon while his finger was on the trigger was such an act. Because there is no plain error, defendant is entitled to no relief. *Carines*, *supra*.

Defendant also contends that he should be permitted to withdraw his plea because it was not knowing, voluntary and intelligent. Assuming that this issue is also not waived, *Kaczorowski*, *supra*, we again find no plain error. See *Carines*, *supra*.

The record indicates that the trial court advised defendant of the constitutional rights he was giving up by pleading guilty, and otherwise complied fully with the requirements of MCR 6.302(B)(1)-(2). Defendant asserts that he found some of the trial court's questions concerning his circumstances threatening or coercive, but there is no indication that the court implied that it would use its discretion to punish defendant for refusing to plead guilty, or otherwise coerced defendant in the matter. See *People v Woodley*, 411 Mich 883; 306 NW2d 102 (1981); *People v*

Gomer, 206 Mich App 55, 59; 520 NW2d 360 (1994). Instead, the trial court properly ensured that defendant understood the consequences of his plea and that he voluntarily, intelligently, and knowingly tendered the plea.[1]

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro

[1] We also note that the record shows that it was defendant, not the trial court, that was pressing for the acceptance of the plea. The trial court attempted several times to take proofs and stated, no less than three times, that the proofs being offered were insufficient, such that the case would have to go to trial. After an extended, two-hour break, the trial court again agreed to accept proofs, at which time defendant was questioned by his own attorney, rather than the prosecution.