

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
June 28, 2011

v

KEVIN DWAYNE HOOVER,
Defendant-Appellant.

No. 297832
Calhoun Circuit Court
LC No. 2009-004177-FC

Before: WHITBECK, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions for second-degree murder, MCL 750.317; and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

Defendant undisputedly shot and killed his father-in-law, Andre Settler, after an argument. Defendant argues the prosecution introduced insufficient evidence to support that he acted with malice. Sufficiency of the evidence is reviewed de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). “[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Second-degree murder has four elements: (1) a death, (2) caused by defendant, (3) with malice, and (4) without lawful justification or excuse. *People v Smith*, 478 Mich 64, 70; 731 NW2d 411 (2007). “[M]alice is the intention to kill, the intention to do great bodily harm, or the wanton and willful disregard of the likelihood that the natural tendency of defendant’s behavior is to cause death or great bodily harm.” *People v Aaron*, 409 Mich 672, 728; 299 NW2d 304 (1980). A jury may infer malice “from the [defendant’s] use of a deadly weapon.” *People v Carines*, 460 Mich 750, 759; 597 NW2d 130 (1999). “[M]inimal circumstantial evidence will suffice to establish the defendant’s state of mind, which can be inferred from all the evidence presented.” *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008) (citations omitted). Viewed in a light most favorable to the prosecution, sufficient evidence supported that defendant acted with malice: defendant aimed his gun at Settler, fired several shots, struck Settler in the

chest, loaded a new magazine into his gun, said “I’ve got another clip for you bitches,” and shot Settler in the back as he lay on the ground.

Defendant urges this Court to reduce his conviction to voluntary manslaughter because he acted in the heat of passion caused by adequate provocation. Voluntary manslaughter is an intentional killing, in the heat of passion, caused by adequate provocation, without “a lapse of time during which a reasonable person could control his passions.” *People v Pouncey*, 437 Mich 382, 388; 471 NW2d 346 (1991). Adequate provocation “would cause the reasonable person to lose control” and is a question of fact. *Id.* at 389-390.

Sufficient evidence, when viewed in a light most favorable to the prosecution, supported that defendant was not adequately provoked. Settler argued with Cassandra Hoover, defendant’s wife, and Cassandra thereafter told defendant the argument was his fault. Settler, Benny Marquez, and Joshua Edwards subsequently stepped toward defendant. The jury rationally concluded that a reasonable person would not lose control in similar circumstances. See *Id.* at 389. “[I]t is simply not the task of an appellate court to adopt inferences that the jury has spurned.” *People v Hardiman*, 466 Mich 417, 431; 646 NW2d 158 (2002). Sufficient evidence supported the jury’s factual finding; we will not interfere with its decision.

We affirm.

/s/ William C. Whitbeck
/s/ Jane E. Markey
/s/ Kirsten Frank Kelly