

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CRAIG PITTS,

Defendant-Appellant.

UNPUBLISHED

June 24, 1997

No. 194754

Recorder's Court

LC No. 94-002906

Before: Markman, P.J., and Holbrook, Jr., and O'Connell, JJ.

MEMORANDUM.

Defendant was convicted in a bench trial 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). The trial court denied defendant's motion for a new trial. He now appeals as of right and we affirm.

Defendant argues that his conviction of second-degree murder is insupportable because (1) insufficient evidence of malice was presented, (2) the trial court failed to consider defendant's claim that the shooting was accidental, and (3) the trial court abused its discretion in denying defendant's motion for a new trial where the verdict was against the great weight of the evidence. We find no merit to these claims. The trial court was presented with conflicting versions of the events leading up to the shooting, and it was within the province of the court, as trier of fact, to assess the credibility of the witnesses. MCR 2.613(C); *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). The court found that the defense witnesses were not credible, the defense theory of accident strained credulity given that the gun was fired twice and defendant fled the state after the shooting, and that no mitigating factors were present to reduce the offense to manslaughter. The court's factual findings indicate that it was aware of the relevant issues in the case and correctly applied the law. MCR 2.517(A)(1); *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). Accordingly, viewing the evidence in a light most favorable to the plaintiff, we conclude that sufficient evidence was presented to sustain defendant's conviction of second-degree murder. Finally, given that the controlling issues in this case were ones of credibility and circumstantial evidence, the verdict was not manifestly against the great weight of the evidence. *In re Robinson*, 180 Mich App 454, 463-464; 447 NW2d 765 (1989). Thus, the trial court did not abuse its discretion in denying defendant's motion for a new trial on that basis.

Affirmed.

/s/ Stephen J. Markman
/s/ Donald E. Holbrook, Jr.
/s/ Peter D. O'Connell