

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

ALONZO PERKINS,

Defendant-Appellant.

UNPUBLISHED

November 16, 2001

No. 228690

Wayne Circuit Court

LC No. 99-011555

Before: Holbrook, Jr., P.J., and Cavanagh and Gribbs,* JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to eighteen to forty years' imprisonment for the second-degree murder conviction, and two years' imprisonment for the felony-firearm conviction, the sentences to run consecutively. We affirm.

Defendant's first issue is that there was insufficient evidence to sustain a conviction for second-degree murder. We disagree. We review claims of insufficient evidence in the light most favorable to the prosecution and determine whether there was sufficient evidence to justify a rational trier of fact in finding that the essential elements of an offense were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, modified in part 441 Mich 1201 (1992); *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

The elements of second-degree murder are: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse. *People v Mayhew*, 236 Mich App 112, 125; 600 NW2d 370 (1999). The element of malice is met by proving the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm. *Id.* Malice may be inferred from evidence that the defendant intentionally set in motion a force likely to cause death or great bodily harm. *Id.* The intent to do an act in obvious disregard of life-endangering consequences is a malicious intent; the defendant need not actually intend the harmful result. *People v Goecke*, 457 Mich 442, 466; 579 NW2d 868 (1998).

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

When viewed in a light most favorable to the prosecution, we find that there was sufficient evidence in this case for a rational trier of fact to find defendant guilty of second-degree murder beyond a reasonable doubt. It can be inferred that defendant acted with wilful and wanton disregard that death or great bodily harm would result when defendant lifted up the hood on his truck, removed a handgun, and shot at least eleven times in the direction of the victim, who was unarmed and had his back to defendant. The evidence was sufficient to establish malice.

Defendant argues that he was sufficiently provoked by the escalating argument he had with the victim and that the incident happened so quickly that he acted under the influence of hot blood. Thus, more appropriately, he should be convicted of voluntary manslaughter rather than murder. Murder and voluntary manslaughter are both homicides and share the element of being intentional killings; it is provocation that separates the two crimes. *People v Hess*, 214 Mich App 33, 38; 543 NW2d 332 (1995). Voluntary manslaughter is an intentional killing committed under the influence of passion or hot blood produced by adequate provocation and before a reasonable time has passed for the blood to cool. *Id.* The provocation necessary to mitigate a homicide from murder to manslaughter is that which would cause the defendant to act out of passion rather than reason. *People v Sullivan*, 231 Mich App 510, 518; 586 NW2d 578 (1998) aff'd 461 Mich 992 (2000). Provocation is adequate only if it would provoke a *reasonable* man to commit the act. *Id.* (emphasis in original). Defendant claims that the argument with and shoving by the victim were sufficient provocation to mitigate the murder to manslaughter. We find that the circumstances, when viewed in a light most favorable to the prosecution, do not show that the provocation was so severe as to provoke a reasonable man to shoot eleven times, with five shots to the victim's back, in order to break up an argument on his front lawn.

Defendant next argues that trial court committed reversible error because it did not adequately consider the lesser included offense of manslaughter. We disagree. When reviewing a claim that, in a bench trial, the court failed to make the proper findings necessary to support a guilty verdict, we review to determine whether the trial court was aware of the factual issues and correctly applied the law. *People v Vaughn*, 186 Mich App 376, 384; 465 NW2d 365 (1990); *People v Rushlow*, 179 Mich App 172, 177-178; 445 NW2d 222 (1989), aff'd 437 Mich 149 (1991).

When presiding over a bench trial, a judge must decide the facts from the evidence presented and apply the law to those facts. *People v Casal*, 412 Mich 680, 689; 316 NW2d 705 (1982). A judge must articulate the facts on the record along with conclusions of law in determining the outcome. *Id.* at 689; MCR 2.517(A)(1). A trial court's factual findings are sufficient as long as it appears that the court was aware of the factual issues and correctly applied the law. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992); *People v Edwards*, 171 Mich App 613, 620; 431 NW2d 83 (1988). A trial court need not make specific findings regarding each element of a particular crime, and failure to make specific findings does not require remand where it is evident that the court was aware of the factual issues, that it resolved the issues, and that further explanation would not assist review. *Legg, supra* at 134-135. Furthermore, a judge sitting as the trier of fact is presumed to render a verdict representing the correct application of the law to the evidence presented. *People v Beard*, 171 Mich App 538, 543-544; 431 NW2d 232 (1988).

Here, in the findings of fact, the trial court discussed the testimony of each of the witnesses and clearly articulated the evidence in the case. It then made specific findings on each of the elements of second-degree murder. The trial court also considered the original charge of first-degree murder, concluding that the requirement of premeditation had not been proven beyond a reasonable doubt. The court was aware of defendant's request to consider voluntary manslaughter as it was defendant's theme throughout the case, defendant had just argued it in his closing, and specifically requested the court to consider manslaughter instead of murder.

The court was aware of all of the evidence, considered the facts, rejected the charged offense of first-degree murder, and then specifically concluded that the elements of second-degree murder had been established beyond a reasonable doubt, thereby correctly applying the law to the facts of the case. The court was not required to specifically discuss the elements of manslaughter in its analysis because the court was aware of all of the factual issues, correctly analyzed the facts of the case using the elements of second-degree murder, and thus resolved the issues. *Legg, supra*, 197 Mich App 134-135. Given the above, we need not reverse the trial court because it sufficiently considered the lesser included offense of manslaughter.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh
/s/ Roman S. Gibbs