

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY JAMES JILES,

Defendant-Appellant.

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UNPUBLISHED

November 15, 2005

No. 254934

Wayne Circuit Court

LC No. 03-011705

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree murder, MCL 750.317,<sup>1</sup> felonious assault, MCL 750.82, possession of a firearm during the commission of a felony, MCL 750.227b, and felon in possession of a firearm, MCL 750.224f. He was sentenced to concurrent prison terms of 15 to 30 years for the murder conviction, 1 to 4 years for the felonious assault conviction, 5 years for the felon in possession conviction, and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm defendant's convictions, but remand for correction of the judgment of sentence. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that there was insufficient evidence that he acted with the malice required for second-degree murder and, therefore, he should have been convicted, at most, of manslaughter. When ascertaining whether sufficient evidence was presented to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. *Id.* at 514-515. Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

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<sup>1</sup> Defendant was originally charged with first-degree murder, MCL 750.316.

The elements of second-degree murder are as follows: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse. *People v Kris Aldrich*, 246 Mich App 101, 123; 631 NW2d 67 (2001) (citation omitted). “[T]he sole element distinguishing manslaughter and murder is malice.” *People v Mendoza*, 468 Mich 527, 536; 664 NW2d 685 (2003). “Malice is defined as 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.” *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998). Malice can be inferred from evidence that the defendant intentionally set in motion a force likely to cause death or great bodily harm. *People v Carines*, 460 Mich 750, 759; 597 NW2d 130 (1999). “Malice may also be inferred from the use of a deadly weapon.” *Id.*

Evidence was presented that six friends were driving around a Detroit neighborhood in two separate cars and drinking alcohol. At one point, the two cars stopped side-by-side for the occupants to converse. David Gibson “cuss[ed] at” Kimberly McKinney,” and spat on her car. Shortly thereafter, defendant took a loaded handgun out of Gibson’s trunk, walked between the cars, stopped at McKinney’s window, and said, “I should shoot you, bit\*\*.” Defendant then pointed the handgun at her head. Defendant walked away from McKinney, but subsequently fired the gun through the top of McKinney’s car. In a statement to the police, defendant admitted that he fired the gun “once in the air, and once in the roof of the car.”

A rational trier of fact could reasonably infer that defendant acted with malice by intentionally discharging a loaded handgun into the roof of an occupied car. Although defendant asserted that he was merely engaged in horseplay, the trial court, as the trier of fact, was entitled to accept or reject any of the evidence presented. See *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999). Viewed most favorably to the prosecution, the evidence was sufficient to sustain defendant’s conviction of second-degree murder.

We reject defendant’s claim that the trial court’s findings of fact and conclusions of law supporting the second-degree murder conviction were insufficient and incorrect, because the court failed to satisfactorily delineate why defendant’s actions did not constitute common-law manslaughter under a gross negligence theory or intentionally aiming a firearm without malice, MCL 750.329.

In actions tried without a jury, the trial court, on the record or in a written opinion, must find the facts specially and state separately its conclusions of law regarding contested matters. MCR 2.517(A)(1); MCR 6.403; *People v Feldmann*, 181 Mich App 523, 534; 449 NW2d 692 (1989). The findings and conclusions are sufficient if brief, definite, and pertinent, without overelaboration of detail or particularization of facts. MCR 2.517(A)(2). A trial court’s duty is satisfied when it is evident that the court was aware of the relevant issues and correctly applied the law. See *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). This Court reviews a trial court’s findings of fact for clear error. MCR 2.613(C). A finding is clearly erroneous where, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake was made. *People v Parker*, 230 Mich App 337, 339; 584 NW2d 336 (1998).

Here, the trial court fully summarized the facts, and correctly focused on the elements of the charged crimes. The trial court provided detailed evidence supporting its finding that

defendant was guilty of second-degree murder and, as noted above, there was sufficient evidence to sustain the conviction. Further, although the court did not over-elaborate, the court explicitly rejected defendant's argument that he should be convicted of common-law manslaughter under a gross negligence theory, or intentionally aiming a firearm without malice. Contrary to defendant's claim, there is no indication that the trial court's findings were inaccurate, or that its conclusions of law were incorrect. After reviewing the entire record, we are not left with a definite and firm conviction that a mistake was made.

Lastly, defendant argues, and the prosecutor concedes, that his judgment of sentence must be amended because it incorrectly reflects that he was sentenced to a flat five-year term for the felon in possession of a firearm conviction. At sentencing, the trial court announced that it was sentencing defendant to 1-1/2 to 5 years' imprisonment for the felon in possession conviction. We therefore remand for correction of the judgment of sentence to reflect a sentence of 1-1/2 to 5 years' imprisonment for the felon in possession conviction.

Affirmed and remanded for clerical correction of defendant's judgment of sentence consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Patrick M. Meter