

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
February 13, 2014

v

TRAVIS DESHAWN FARROW,  
  
Defendant-Appellant.

No. 309308  
Saginaw Circuit Court  
LC No. 11-035856-FC

---

Before: BOONSTRA, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of first-degree felony murder, MCL 750.316(b), armed robbery, MCL 750.529, possession of 50 to 449 grams of cocaine, MCL 333.7403(2)(a)(iii), resisting and obstructing a police officer, MCL 750.81d(1), and three counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. We affirm.

On August 1, 2010, the victim in this case was shot and killed in the parking lot of a shopping center in Saginaw. Defendant and Bryant Bentley fled the scene in a van. While attempting to apprehend them, a police officer observed two handguns fall out of the passenger side of the van, which were later identified as a Colt .45 caliber and a .40 caliber Glock. Defendant was subsequently apprehended.

Defendant stated to police and at trial that Bentley had wanted to buy cocaine from the victim, and that Bentley shot the victim outside the van while defendant remained inside the van. A prisoner who was incarcerated in the county jail with defendant for a period testified that he overheard defendant tell another inmate a different account of the shooting. According to this account, defendant and Bentley had planned to rob the victim of cocaine. When they met up with the victim, the victim entered the van that defendant and Bentley were in. Bentley then pulled a .45 caliber handgun on the victim. The victim was able to wrest the handgun from Bentley but could not fire it, which defendant believed to be the result of a defect. Bentley yelled for defendant to shoot the victim. The victim tried to open a sliding door in the rear of the van, but it did not work. Defendant then shot the victim in the back with a .40 caliber handgun while he was trying to climb out of the van through a window.

On appeal, defendant first argues that his trial counsel provided ineffective assistance because he failed to request instructions on manslaughter and defense of others. We disagree.

Because defendant did not move for a new trial or for an evidentiary hearing, our review is limited to errors apparent on the record. *People v Armisted*, 295 Mich App 32, 46; 811 NW2d 47 (2011). “Whether a person has been denied the effective assistance of counsel is a mixed question of fact and constitutional law.” *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). Findings of fact are reviewed for clear error, while determinations of constitutional law are reviewed de novo. *Id.*

The Sixth Amendment to the United States Constitution and Article I, § 20 of the Michigan Constitution guarantee the right to effective assistance of counsel for criminal defendants. *Strickland v Washington*, 466 US 668, 686; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). To establish that his counsel did not render effective assistance and that he is entitled to a new trial, “defendant must show that (1) counsel’s performance fell below an objective standard of reasonableness and (2) but for counsel’s deficient performance, there is a reasonable probability that the outcome would have been different.” *People v Trakhtenberg*, 493 Mich 38, 51; 826 NW2d 136 (2012). “Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise.” *People v Seals*, 285 Mich App 1, 17; 776 NW2d 314 (2009), quoting *People v Solmonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004).

Voluntary manslaughter is defined as follows:

[I]f the act of killing, though intentional, be committed under the influence of passion or in heat of blood, produced by an adequate or reasonable provocation, and before a reasonable time has elapsed for the blood to cool and reason to resume its habitual control, and is the result of the temporary excitement, by which the control of reason was disturbed . . . then the law, out of indulgence to the frailty of human nature . . . regards the offense as of a less heinous character than murder, and gives it the designation of manslaughter. [*People v Pouncey*, 437 Mich 382, 388; 471 NW2d 346 (1991) (citation omitted).]

For a killing to constitute manslaughter, it “must have been the product of an act of passion; it must have been committed in a moment of frenzy or of temporary excitement.” *People v Younger*, 380 Mich 678, 681; 158 NW2d 493 (1968). “The passion aroused by the provocation must be sufficiently extreme to dethrone reason and prevent cool reflection.” 2 Wharton’s Criminal Law (15th ed), § 156, p 348. Malice, the mens rea necessary for murder, is negated when a killing is committed in a heat of passion caused by adequate provocation. *People v Reese*, 491 Mich 127, 152; 815 NW2d 85 (2012). “[W]hen a defendant is charged with murder, an instruction for voluntary and involuntary manslaughter must be given if supported by a rational view of the evidence. *People v Mendoza*, 468 Mich 527, 541; 664 NW2d 685 (2003).

No rational view of the evidence supported a manslaughter instruction in this case. According to the account of the shooting provided by the prisoner witness, the victim and Bentley struggled over a gun, the victim wrested the gun from Bentley but was unable to fire it, and defendant shot the victim in the back while he was trying to escape through a window. Regardless of whether defendant was “provoked,” however, there was simply no evidence indicating that defendant was beset by an extreme passion that had supplanted his reason.

More importantly, however, and dispositive of the issue, defendant, in his statements to police and his testimony at trial, claimed that Bentley shot the victim. Thus, a manslaughter instruction would have been at odds with his own testimony. Accordingly, a manslaughter instruction was unwarranted and defendant's trial counsel was not ineffective for failing to request it. See *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

Defendant also argues that his trial counsel should have requested an instruction on defense of others. MCL 780.972 provides:

(1) An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if either of the following applies:

(a) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual.

Again, such an instruction would have been at odds with defendant's testimony. And, according to the prisoner-witness testimony, defendant was committing armed robbery at the time the victim was fatally shot.

However, that statute "does not diminish an individual's right to use deadly force or force other than deadly force in self-defense or defense of another individual as provided by the common law of this state in existence on October 1, 2006." MCL 780.974. The common law of defense of others as it existed in Michigan before October 1, 2006, is not well defined. See *People v Kurr*, 253 Mich App 317, 320-321; 654 NW2d 651 (2002) (recognizing the defense of others doctrine but not explicitly defining it). However, it undoubtedly did not countenance the application of the doctrine in a case such as this, where two armed felons attempted to rob a victim, the victim assailed one of the felons, and the other felon killed the victim. Indeed, as one treatise recognizes, "[o]f course, under the guise of defending another, a defendant may not assist another person in committing a crime . . . against a third person." 2 Wharton's Criminal Law (15th ed), § 130, p 218. Thus, as a defense of others instruction was unwarranted, defendant's trial counsel was not ineffective for failing to request it. See *Snider*, 239 Mich App at 425.

Defendant next argues that there was insufficient evidence of malice for the jury to find defendant guilty of felony murder. We disagree.

When examining whether there was sufficient evidence to support a conviction, the evidence is reviewed de novo in a light most favorable to the prosecution to determine "whether a rational trier of fact could have found that the essential elements of the crime were proved beyond reasonable doubt." *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010). In reviewing the sufficiency of the evidence, we will not interfere with the role of the trier of fact in determining "the weight of the evidence or the credibility of witnesses." *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012), quoting *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). Furthermore, "[i]t is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to

be accorded those inferences.” *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

Defendant argues that there was insufficient evidence presented at trial for the jury to find that he acted with malice. Malice is the required mens rea for felony murder. *People v Aaron*, 409 Mich 672, 728-729; 299 NW2d 304 (1980). “Malice is defined as (1) the intent to kill, (2) the intent to do great bodily harm, or (3) a wanton and wilful disregard of the likelihood that the natural tendency of the defendant’s act is to cause death or great bodily harm, i.e., depraved-heart murder.” *People v Dumas*, 454 Mich 390, 396-397; 563 NW2d 31 (1997). Malice can be inferred from a defendant’s use of a deadly weapon. *People v McMullan*, 284 Mich App 149, 153; 771 NW2d 810 (2009).

Viewing the evidence in the light most favorable to the prosecution, the jury could have concluded that defendant shot the victim at Bentley’s behest. It could also be inferred that defendant intended to incapacitate the victim by either killing him or grievously injuring him when he fired. Defendant’s argument that he did not act with malice because he was defending himself and Bentley is without merit. It is true that a valid assertion of self-defense or defense of others may negate malice. See *Reese*, 491 Mich at 151-152. However, as explained above, defendant could not validly assert defense of others. Consequently, sufficient evidence was presented for the jury to find that defendant acted with malice.

Finally, defendant’s claim of error regarding his sentence for armed robbery was resolved on interlocutory remand.

Affirmed.

/s/ Mark T. Boonstra  
/s/ Mark J. Cavanagh  
/s/ E. Thomas Fitzgerald