

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CURTIS L. THOMAS,

Defendant-Appellant.

UNPUBLISHED

December 17, 2002

No. 236012

Wayne Circuit Court

LC No. 00-003064-01

Before: Fitzgerald, P.J., and Wilder and Cooper, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree murder, MCL 750.317, assault with intent to do great bodily harm, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to prison terms of twenty-five to seventy years for the murder conviction, five to ten years for the assault conviction, and two years for the felony-firearm conviction. Defendant appeals as of right. We affirm.

This case arises from the shooting of Lamar Thomas and Sumeka Abney. Thomas was killed and Abney was injured. Three witnesses identified defendant as the shooter, and defendant admitted during an interview with police that he did the shooting. At trial, defendant denied shooting the victims and testified that he was ill at home at the time the shooting occurred. The disputed issue at trial was the identity of the shooter.

Defendant first argues that the trial court erred by denying his motion in limine in which he sought to prohibit the prosecution from introducing into evidence the results of gunshot residue tests performed on defendant's girlfriend's forehead and jacket. He contends that the evidence was not relevant because the prosecution never established that defendant and his girlfriend were acting in concert. However, the evidence of the gunshot residue tests performed on defendant's girlfriend was not admitted for this purpose. Rather, the scientific evidence was admitted to corroborate a witness' statement that defendant's girlfriend was on the porch when the shooting occurred. Indeed, defense counsel conceded at trial that the evidence would be "used to connect directly the material issue of whether my client was there and in fact did the shooting." The evidence was clearly relevant to a disputed issue of fact, and the trial court did not abuse its discretion by admitting the evidence for this purpose. *People v Mills*, 450 Mich 61, 66; 537 NW2d 909 (1995).

Next, defendant argues that his conviction must be reversed because the trial court made insufficient findings of fact and conclusions of law with regard to the element of intent for the offense of second-degree murder. We disagree.

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 Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998); MCL 750.317. 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 willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id.* at 464. Malice may be inferred from evidence that the defendant "intentionally set in motion a force likely to cause death or great bodily harm." *People v Djordjevic*, 230 Mich App 459, 462; 584 NW2d 610 (1998). The prosecution is not required to prove that the defendant actually intended to harm or kill. Instead, the prosecution must prove "the intent to do an act that is in obvious disregard of life-endangering consequences." *People v Mayhew*, 236 Mich App 112, 125; 600 NW2d 370 (1999).

In an action tried without a jury, the trial court's findings of fact are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). The sufficiency of findings must be reviewed in the context of the specific and legal issues raised by the parties and the evidence. *People v Rushlow*, 179 Mich App 172, 177; 445 NW2d 222 (1989).

Here, the disputed issue at trial was the identity of the perpetrator. Defendant has presented no argument regarding the trial court's factual finding that defendant was the shooter. Rather, defendant's argument regards the state of mind of the shooter. The state of mind of the shooter was not directly placed in issue. Nonetheless, the trial court made the following findings with regard to the shooter's intent:

The question in my mind, though, is whether the People have in fact established a first-degree premeditated murder.

And based on the defendant's statement, I am convinced that although he went to that house to scare Mr. Lamar Thomas - - and I will have to say this. His demeanor here on the stand indicated what a short fuse he has. I pulled out, and I have here, because I wanted to read this. One of the things, if we had had a jury trial, that I would have read to the jury would have been, in judging credibility:

How did the witness look and act while testifying? Did the witness seem to be making an honest effort to tell the truth, or did the witness seem to evade the questions or argue with the lawyers:

And Mr. Thomas most certainly argued with the prosecutor until I reminded him of that instruction, and then he calmed down. He has a hair-trigger.

And so I'm convinced beyond a reasonable doubt that when he and Ashante went over to that house, he went over, probably just to scare Lamar Thomas, but he performed an act in a willful and wanton way that ended up killing Mr. Thomas, and so he's guilty of second degree murder.

Defendant asserts that the trial court failed to specifically find that defendant was aware that the probable result of his willful and wanton conduct was to create a high risk of death or great bodily harm. However, there can be no legitimate dispute that the trial court was aware of the law on the element of intent for second-degree murder. Further, evidence was presented that the shooter was standing in the doorway of a house, pointed a gun at Thomas, and fired five or six shots. Three people were struck by bullets. These facts are sufficient to support a finding that defendant acted in wanton and willful disregard of the likelihood that the natural tendency of his behavior was to cause death or great bodily harm and it would not facilitate appellate review to require further explanation of the facts relied on by the court in reaching its conclusion that defendant was guilty of second-degree murder with respect to the shooting of Lamar Thomas. *People v Porter*, 169 Mich App 190, 193; 425 NW2d 514 (1988).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Kurtis T. Wilder

/s/ Jessica R. Cooper