

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DAVIS,

Defendant-Appellant.

UNPUBLISHED

May 19, 1998

No. 199572

Recorder's Court

LC No. 96-001621

Before: Neff, P.J., and O'Connell and Young, Jr., JJ.

PER CURIAM.

Defendant appeals by right his bench trial convictions for 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). Defendant was sentenced to fifteen to thirty years in prison for the second-degree murder conviction and to a consecutive two-year prison term for the felony-firearm conviction. We affirm.

Defendant first argues that there was insufficient evidence to disprove his self-defense claim. We disagree. When reviewing the sufficiency of evidence in a criminal case, this Court views the evidence in the light most favorable to the prosecution to determine whether a rational factfinder could find the essential elements of the crime proven beyond a reasonable doubt. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). "Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime." *Id.*, quoting *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

The killing of another in self-defense is justifiable homicide if the defendant honestly and reasonably believes that his life is in imminent danger or that there is a threat of serious bodily harm. *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990). A defendant is not entitled to use any more force than is necessary to defend himself. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993). Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt. *People v Fortson*, 202 Mich App 13, 19; 507 NW2d 763 (1993).

Here, although defendant claimed that the decedent was choking him when defendant fired the gun, the evidence presented at trial indicated that defendant was not in imminent danger from decedent nor was there a threat of serious bodily harm to defendant at the time of the shooting. Defendant did not shoot the decedent at close range and no weapon was found in the decedent's possession. The evidence also demonstrated that defendant shot decedent three times in the back side of his body. Accordingly, the evidence was sufficient for a rational factfinder to find beyond a reasonable doubt that the prosecution disproved defendant's self-defense theory.

We also conclude that the present record lacks evidence of provocation or heat of passion sufficient to mitigate second-degree murder to voluntary manslaughter. See *People v Hess*, 214 Mich App 33, 38; 543 NW2d 332 (1995).

Defendant's final argument is that the trial court abused its discretion in denying his motion for a new trial. Because the verdict is not against the great weight of the evidence, we find defendant's argument is without merit. MCR 2.611(A)(1)(e).

Affirmed.

/s/ Janet T. Neff

/s/ Peter D. O'Connell

/s/ Robert P. Young, Jr.