

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEJUAN E. GILBERT,

Defendant-Appellant.

UNPUBLISHED

May 18, 1999

No. 208776

Wayne Circuit Court

LC No. 96-503874

Before: Markey, P.J., and Holbrook, Jr. and Neff, JJ.

PER CURIAM.

Defendant, Dejuan E. Gilbert, appeals by right from his jury trial conviction of 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 ten to twenty-five years in prison for the second-degree murder conviction, to be served consecutive to a two-year term in prison for the felony-firearm conviction. We affirm.

Defendant first claims that the trial court erred in its instructions to the jury regarding defendant's claim of self-defense because the instructions did not make it clear that the prosecution had the burden to prove beyond a reasonable doubt that defendant did not act in self-defense. We first note that defendant's failure to object to the court's instruction to the jury on self-defense waives error unless relief is necessary to avoid manifest injustice in this case. MCL 768.29; MSA 28.1052; *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). No manifest injustice would result in this case from our failure to review this issue because the court properly instructed the jury on each element of self-defense, CJI2d 7.15 and 7.16, and made it very clear that the prosecutor had the burden of proving beyond a reasonable doubt that defendant did not act in self-defense. CJI2d 7.20; *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993). See generally, *People v Mixon*, 170 Mich App 508, 517-519; 429 NW2d 197 (1988), rev'd in part on other grounds 433 Mich 852 (1989). In addition, the court properly instructed the jury that it was the prosecutor's burden to prove each element of the charged offenses beyond a reasonable doubt. The court's instructions were not erroneous and sufficiently protected defendant's rights regarding his claim of self-defense. *Id.*

Next, defendant claims that the prosecution presented insufficient evidence that defendant did not act in self-defense. We disagree.

In reviewing the sufficiency of the evidence, we view the evidence in a light most favorable to the prosecutor 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; 489 NW2d 748 (1992). We conclude that there was ample evidence by which a jury could find that defendant did not act in self-defense when he killed the victim in this case.

In *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990), our Supreme Court stated that “the killing of another person 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.” While evidence was presented that the victim in this case had previously assaulted and threatened defendant, the evidence did not indicate that defendant was in imminent danger from the victim at the time that he shot him. Evidence was presented that the victim neither attacked defendant nor reached for or displayed a weapon prior to the time that he was shot by defendant. No weapon was found on the victim. Evidence was presented that defendant pointed his gun at the victim’s head and fatally shot him in the head at close range. Viewed in a light most favorable to the prosecution, the evidence was sufficient to prove beyond a reasonable doubt that defendant did not act in self-defense. See, e.g., *People v Truong (After Remand)*, 218 Mich App 325, 337-338; 553 NW2d 692 (1996).

We affirm.

/s/ Jane E. Markey

/s/ Donald E. Holbrook, Jr.

/s/ Janet T. Neff