

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY EUGENE IZZARD,

Defendant-Appellant.

UNPUBLISHED
October 19, 1999

No. 208789
Recorder's Court
LC No. 97-003426

Before: Gribbs, P.J., and O'Connell and R. B. Burns*, JJ.

PER CURIAM.

Defendant appeals from his jury trial conviction for voluntary manslaughter, MCL 750.321; MSA 28.553. He was sentenced to a term of ten to fifteen years. We affirm.

Defendant first argues that there was insufficient evidence to convict him because the prosecution failed to prove beyond a reasonable doubt that defendant did not act in self-defense. We disagree.

We review the evidence in the 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 proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), modified on other grounds 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences drawn from the evidence may constitute satisfactory proof of the elements of the crime. *Wolfe, supra*, 440 Mich at 524, 526.

"The elements of voluntary manslaughter are (1) the defendant must kill in the heat of passion, (2) the passion must be caused by an adequate provocation, and (3) there cannot be a lapse of time during which a reasonable person could control his passions." *People v Sullivan*, 231 Mich App 510, 518; 586 NW2d 578 (1998). Once a defendant introduces evidence of self-defense, the prosecution bears the burden of disproving it beyond a reasonable doubt. *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Here, defendant testified that he acted in self-defense because the victim lunged at him and tried to stab him, and the victim had a kitchen meat fork in his shirt pocket and about a nine inch knife in his pants' pocket, both of which had unidentified blood on them. On the other hand, one witness testified that defendant said that he was going to "do" the victim and went looking for him; another witness testified that defendant jumped out of his car, asked the victim to move, and stabbed him. Thus, there was conflicting evidence concerning whether defendant honestly and reasonably believed that he was in imminent danger of death or great bodily harm. *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990). Resolving such credibility disputes is within the exclusive province of the trier of fact. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). Viewed in the light most favorable to the prosecution, there was sufficient evidence to disprove defendant's theory of self-defense.

Next, defendant argues that his ten to fifteen year sentence was disproportionate to the offense and the offender. We disagree. Defendant's sentence is reviewed for abuse of discretion. *People v Houston*, 448 Mich 312, 319-320; 532 NW2d 508 (1995).

Defendant's ten year minimum sentence was within the guidelines' range and is therefore presumptively proportionate absent unusual circumstances. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). Defendant's employment history and his relationship with his children are not unusual circumstances which overcome this presumption. See *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). The court also properly considered defendant's record and the facts of the crime even though defendant was convicted of a lesser offense. *People v Purcell*, 174 Mich App 126, 130-131; 435 NW2d 782 (1989).

Affirmed.

/s/ Roman S. Gribbs
/s/ Peter D. O'Connell
/s/ Robert B. Burns