

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARMEN CLOPTON, a/k/a CARMEN CLARK
CLOPTON,

Defendant-Appellant.

UNPUBLISHED

August 11, 2000

No. 218347

Kalamazoo Circuit Court

LC No. 98-000768-FC

Before: Smolenski, P.J., and Zahra and Collins, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of voluntary manslaughter, MCL 750.321; MSA 28.553, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). She was sentenced to one to fifteen years' imprisonment for the manslaughter conviction to be served consecutive to a two-year term for the felony-firearm conviction. Defendant now appeals as of right. We affirm.

Defendant argues that her convictions should be reversed because the prosecution failed to prove beyond a reasonable doubt that she was not acting in self-defense of herself or her children when she fatally shot her husband, the victim in this case. We disagree.

When reviewing a claim of insufficient evidence to sustain a bench trial conviction, we consider all the evidence presented in the prosecution's case in chief in a light most favorable to the prosecution. If a rational trier of fact could reasonably have found that the essential elements of the crime were proven beyond a reasonable doubt, the conviction must be sustained. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985); *People v Hunter*, 209 Mich App 280, 282; 530 NW2d 174 (1995). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

"[T]he killing of another person in self-defense is justifiable homicide if the defendant honestly and reasonably believes that [her] 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). The right to act in self-defense

generally includes the right to defend another. *People v Curtis*, 52 Mich 616, 622; 18 NW 385 (1884); *People v Wright*, 25 Mich App 499, 503; 181 NW2d 649 (1970). Once evidence that the defendant acted in self-defense has been introduced, the prosecution bears the burden of disproving it beyond a reasonable doubt. *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

Viewing the evidence in the instant case in a light most favorable to the prosecution, we conclude that the prosecution introduced sufficient evidence to disprove defendant's self-defense claim. The trial court appropriately considered the evidence regarding battered spouse syndrome. See *People v Christel*, 449 Mich 578; 537 NW2d 194 (1995); *People v Wilson*, 194 Mich App 599; 487 NW2d 822 (1995). While defendant had reason to fear the victim on the basis of prior assaults and threats, the evidence did not indicate that she honestly or reasonably believed that she or her children were in imminent danger of death or serious bodily harm at the time she shot the victim. See *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996).

The trial court, as the trier of fact and the sole judge of credibility, was entitled to disbelieve defendant's testimony that she either did not mean to shoot the victim or that she shot the victim because she feared for her and her children's life. See *People v Cartwright*, 454 Mich 550, 555; 5563 NW2d 208 (1997). Defendant testified that the abuse she suffered at the hands of the victim on the night in question was different from prior instances of abuse in that she "couldn't take it anymore." Defendant further undercut her claimed fear of death and serious injury to either herself or her children by the fact that, after she allegedly fired a warning shot at the victim, she knowingly gave him the loaded weapon and left him alone with the children while he had the gun. Also, following the shooting, defendant did not tell the police that she shot the victim to protect the children.

The law of self-defense is based on necessity, and a killing will be condoned only when the killing was the only escape from death or serious bodily harm under the circumstances. *Heflin, supra*; *Truong, supra*. The evidence here was uncontroverted that the victim was in the act of leaving the parties' house when defendant seemingly taunted him and he returned unarmed to the living room. Two witnesses testified that they heard him begging for his life. The trial court could reasonably conclude that killing the victim was not defendant's only escape from further infliction of injury by the victim. Defendant could have simply let the victim leave the house, as he was in the process of doing.

In reviewing a claim challenging the sufficiency of the evidence, we resolve conflicts in the evidence in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Based on the evidence, the trial court was reasonable in concluding that defendant did

not honestly or reasonably believe that either she or her children were in danger of being seriously injured or killed by the victim.

Affirmed.

/s/ Michael R. Smolenski

/s/ Brian K. Zahra

/s/ Jeffrey G. Collins