

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MONICA LATRICE LEWIS,

Defendant-Appellant.

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UNPUBLISHED

December 16, 2004

No. 249834

Wayne Circuit Court

LC No. 03-001049-01

Before: Murphy, P.J., and White and Kelly, JJ.

PER CURIAM.

Defendant was charged with second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b. Following a nonjury trial, she was convicted of voluntary manslaughter, MCL 750.321, and felony-firearm. She was sentenced to a prison term of thirty-six months to fifteen years on the manslaughter conviction, to be served consecutively to the mandatory two-year term for felony-firearm. Defendant appeals her convictions as of right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the evidence was not sufficient to sustain her convictions because, contrary to the court's finding, the prosecutor did not disprove that she acted in lawful self-defense.

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39; 642 NW2d 339 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). "An appellate court will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses." *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

"A claim of self-defense or defense of others first requires that a defendant has acted in response to an assault." *Detroit v Smith*, 235 Mich App 235, 238; 597 NW2d 247 (1999). A

killing 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, 508; 456 NW2d 10 (1990).

When a defendant uses deadly force, the test for determining whether he acted in lawful self-defense has three parts: 1) the defendant honestly and reasonably believed that he was in danger of serious bodily injury or death, 2) the defendant may not kill just to protect himself against what seems like a threat of only minor injuries, and 3) the action taken by the defendant appeared at the time to be immediately necessary, i.e., the defendant is only entitled to use the amount of force necessary to defend himself. CJI2d 7.15; *Heflin, supra*. “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, 20; 507 NW2d 763 (1993).

“The necessity element of self-defense normally requires that the actor try to avoid the use of deadly force if he can safely and reasonably do so, for example by applying nondeadly force or by utilizing an obvious and safe avenue of retreat.” *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002) (footnote omitted). This is because if an attack can be safely avoided, the use of deadly force is not necessary. *Id.* at 129. However, regardless of the circumstances, if the defendant is attacked in his own home, he “is *never* required to retreat where it is otherwise necessary to exercise deadly force in self-defense.” *Id.* at 120 (emphasis in original).

The evidence showed that the deceased, Robert Walker, was visiting defendant at her home. They began fighting after defendant asked Walker to leave, and he assaulted defendant by throwing shoes at her and physically attacking her. During a lull in the fight, defendant retrieved a rifle from the bedroom. According to witness Boyd, defendant set it down in the dining room. According to defendant, she gave it to Walker, who later set it down. Walker resumed his temper tantrum, demanding his cell phone and throwing things around. He demanded his gun and advanced toward defendant while threatening to kill her, but he was not armed. Defendant grabbed the gun and fired a warning shot into the ceiling. She told Walker to leave or she would shoot him. When he said she lacked the nerve, she shot him.

Walker may have been physically bigger and stronger than defendant, but despite punching and kicking her during their fight, he apparently did not cause her serious physical injury. Walker verbally threatened to kill her as he had done often in the past, but he was not armed with any sort of weapon, and there is no evidence that he sought to wrest the gun from defendant’s control or that a more serious or deadly physical assault would ensue.<sup>1</sup> In fact, there was evidence that Walker handled the gun shortly before the shooting, did not threaten defendant with the gun, and then set the gun aside. Moreover, defendant’s own statement to police does not specifically indicate that Walker was advancing on, rushing, or assaulting defendant at the precise time she actually discharged the weapon at Walker with the fatal shot. Defendant stated, “I told him to leave or I would shoot him. He told me that I didn’t have the nerves to shoot him

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<sup>1</sup> Defendant told police that, at the time of the shooting, Walker did not appear armed, that Walker had already jumped on her twice that evening, and that it was not the first time he had assaulted her.

and that's when I shot again." Viewing this evidence in a light most favorable to the prosecution, the trier of fact could reasonably conclude that defendant shot Walker because he essentially dared her to do so and because he would not leave the home, not because she feared serious bodily injury or death. Under the circumstances, the evidence was sufficient to prove that defendant did not act with an honest and reasonable belief that she was in immediate danger of serious injury or death. See, e.g., *People v Elkhaja*, 251 Mich App 417, 443-445; 651 NW2d 408 (2002), vacated in part on other grounds 467 Mich 916; 658 NW2d 153 (2003); *People v Oster (On Resubmission)*, 97 Mich App 122, 132-135; 294 NW2d 253 (1980).

Defendant also contends that she is entitled to a new trial because the verdict was against the great weight of the evidence regarding her claim of self-defense. Based on our discussion of the evidence above, we conclude that the evidence does not preponderate heavily against the verdict such that it would be a miscarriage of justice to allow the verdict to stand. *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998).

Affirmed.

/s/ William B. Murphy

/s/ Helene N. White

/s/ Kirsten Frank Kelly