

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRADLY KEVIN MEADOWS,

Defendant-Appellant.

UNPUBLISHED
November 6, 2007

No. 272394
Wayne Circuit Court
LC No. 05-010412

Before: Zahra, P.J., and White and O’Connell, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to three years’ probation for the felonious assault conviction and a consecutive two-year prison term for the felony-firearm conviction. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

There was no dispute at trial that defendant fired multiple shots into the rear wheel area of a vehicle occupied by the complainant, Robert Zumbro. The defense theory was that defendant was acting in defense of others, specifically, Zumbro’s girlfriend or former girlfriend, Mary Beth Meeks.

The events that led to the shooting began when Zumbro discovered Meeks in a restaurant and bar with defendant and two other men, the Castro brothers. Meeks asked Zumbro to leave, and he did, but he later returned to the restaurant with his mother. When Meeks and defendant left the restaurant, Zumbro and his mother approached, and an angry confrontation ensued. Meeks drove away in her vehicle, but defendant followed in his own vehicle. Zumbro and his mother followed them both in her truck. Defendant followed Meeks to the police department, but Meeks turned around and left as soon as she arrived. She called Zumbro and told him to leave her alone, but he and his mother, as well as defendant, followed her to a fitness facility in Canton. Meeks contacted the Castro brothers to arrange for them to scare Zumbro away. In his statement to the police, defendant stated that he followed Meeks there because Zumbro had beaten her up in the past, and “they were going to put a scare in him.”

When Zumbro and his mother turned into the parking lot, the Castro brothers approached their vehicle, and one of them punched it. Zumbro’s mother got out of the vehicle, and Zumbro drove off in it. According to Zumbro, he drove off because the brothers were coming after him.

However, Zumbro continued chasing Meeks's car around the parking lot. Zumbro admitted that he was driving fast and unsafely and that he squealed his tires, locked up his brakes, drove up on to the landscaping in the lot, and nearly struck one of the brothers chasing him. After a period of chasing, the vehicles Zumbro and Meeks were driving made contact in a sideswipe type of collision.

After the collision and after Meeks had stopped, Zumbro continued to drive because the Castro brothers were chasing him on foot and defendant was pursuing him in his vehicle. At one point, defendant blocked Zumbro, and Zumbro backed his vehicle away. Defendant and the Castro brothers continued to chase Zumbro. Eventually, Zumbro and defendant stopped their vehicles on the north side of the parking lot. They made eye contact, and according to Zumbro, "the next thing I know I'm getting shot at." He claimed that his mother's vehicle was stopped and pointed southbound toward the fitness facility when defendant shot at it. Zumbro heard two or three shots. According to Zumbro, defendant "was shooting at my vehicle." The police discovered bullet damage appearing to be three strikes to the driver's side rear wheel well area and the tire. At the time of the shooting, defendant was approximately 10 to 15 feet away from the vehicle. Meeks was on the south end of the parking lot, "on the total opposite end" of the lot, and not anywhere near Zumbro or defendant.

Officer Edward Jagst received a dispatch that a black Chevy Extreme Blazer was involved in a chase with a gray Pontiac and was ramming it, but when he arrived at the parking lot, he saw a blue Durango chasing after a black Blazer. The vehicles traveled northbound approaching the next business. He saw them "kind of stopping" and then heard four or five gunshots. The black Blazer came back toward Jagst, while the Durango left. The police recovered four shell casings and a gun.

Defendant testified that he saw Zumbro chasing Meeks with his vehicle. He also saw Zumbro's vehicle ram into the side of Meeks's stopped vehicle. According to defendant, it appeared that Zumbro deliberately drove his vehicle into the other vehicle. Defendant testified that he thought someone was going to get hurt. He testified that he saw Zumbro swerve at Saul Castro, requiring Saul to jump onto an island to avoid being hit. According to defendant, he thought that if the incident did not stop, somebody was going to get killed. He went back into his truck and blocked Zumbro as he came by. Zumbro drove into the hotel parking lot to the north, and defendant parked his truck at an angle to block the drive. Defendant testified that, as Zumbro circled around, defendant got out of his truck and retrieved a gun from the lock box in the back. He readied the gun and put it into his waistband.

Defendant testified that when Zumbro came around, he slammed on his brakes and stopped. Defendant yelled at him to leave. Zumbro floored his car's engine, drove over a curb, and headed south. According to defendant, Zumbro was headed back toward Meeks. Concerned for Meeks, who was over in the parking lot close to where the incident started, the Castro brothers, and the bystanders, defendant pulled out his gun and from 10 to 12 feet away, fired three or four shots aimed at Zumbro's back tire. Defendant claimed that he wanted to disable the vehicle because somebody was going to be hurt, if not killed, otherwise. The tire blew out, and Zumbro continued south. Defendant got back into his truck and left. He testified that he did not believe that Meeks and the people in the lot were still in danger. He testified that he panicked, threw the gun, and went home. He denied seeing the police at the parking lot. He admitted lying

to the police about the location of one of his guns when he was interviewed. He denied telling the police that he followed Meeks because he wanted to scare Zumbro away.

Meeks had told defendant of previous incidents of domestic violence involving Zumbro, including that he had recently given Meeks a black eye. Asked if he believed that Meeks was in immediate danger when he fired the weapon, defendant initially responded, “She would have been if Mr. Zumbro would have gotten by me,” and when further pressed to answer the question, stated, “I felt she was.”

The trial court rejected defendant’s claim that his actions were legally justified as defense of others because defendant had other options and his actions were not reasonable.

On appeal, defendant argues that the prosecution failed to prove beyond a reasonable doubt that he did not act in the defense of others. He argues that the court misapplied the requirement of immediate danger and the duty to retreat. We disagree. We review de novo a challenge to the sufficiency of the evidence in a bench trial. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005).

If a defendant honestly and reasonably uses force necessary to defend another individual from harm, then the defendant’s actions are justified and no criminal conviction will follow from the otherwise criminal acts. CJI2d 7.22. “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). As with self-defense, necessity is the touchstone of any claim that defendant was acting in the defense of others. *People v Riddle*, 467 Mich 116, 127; 649 NW2d 30 (2002). Furthermore, a defendant’s actions must be proportionate to the danger and are only justified to the extent they are necessary and unavoidable—any criminal actions that occur before retreating or after the threat has passed are subject to prosecution. *People v Kemp*, 202 Mich App 318, 322-323; 508 NW2d 184 (1993). When acting in defense of another, “the third party steps into the shoes of the individual threatened.” *People v Heflin*, 434 Mich 482, 511-512, n 26; 456 NW2d 10 (1990). Once evidence of self-defense, or in this case, defense of others, 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).

Viewing the evidence in the light most favorable to the prosecution, the evidence was sufficient to disprove the affirmative defense of defense of others beyond a reasonable doubt. The testimony established that, at the time defendant fired his weapon, he and Zumbro were on the other side of the parking lot away from Meeks and the bystanders. Before and after Zumbro hit Meeks, defendant and the others had ample opportunity to retreat to safety, but chose not to do so. The failure to retreat supports the court’s determination that defendant did not act reasonably before assaulting Zumbro. *Kemp, supra*. The evidence also suggested that defendant was chasing Zumbro when police arrived, that defendant had cut off Zumbro, and that Zumbro had stopped the Blazer and backed away rather than hitting defendant. Contrary to defendant’s account, other witnesses testified that Zumbro was rather stationary when defendant fired on the Blazer, so Zumbro was not assaulting anyone at the time. Although at the time of the shooting it was possible that Zumbro intended to resume chasing Meeks or the Castro brothers, a rational trier of fact could determine beyond a reasonable doubt that Zumbro did not pose an imminent danger to them, so defendant did not honestly and reasonably act on a belief that force was

necessary to protect Meeks from an imminent assault. Therefore, the trial court's findings and rulings were proper.

Defendant also argues that the evidence was insufficient to establish that he specifically intended to injure or place the victim in reasonable fear or apprehension of an immediate battery. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992). We disagree. Defendant corroborated Zumbro's testimony that he aimed his firearm at the vehicle and fired multiple shots at it from relatively close range. Although defendant claimed that he only intended to disable the vehicle, a rational trier of fact could determine that defendant, consistent with the plan of involving the Castro brothers, shot at the vehicle to frighten Zumbro into believing that he would be shot.

Affirmed.

/s/ Brian K. Zahra
/s/ Helene N. White
/s/ Peter D. O'Connell