

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LYNN NEIL JACKSON,

Defendant-Appellant.

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UNPUBLISHED

April 24, 2008

No. 275086

Wayne Circuit Court

LC No. 05-010478-01

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree murder, MCL 750.317, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to 10 to 20 years' imprisonment for the second-degree murder conviction, one to five years' imprisonment for the felon in possession of a firearm conviction, and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant asserts that there was insufficient evidence presented at trial to support his conviction for second-degree murder. Specifically, defendant contends that the evidence established the applicability of the doctrine of imperfect self-defense, which mitigates second-degree murder to a voluntary manslaughter. We disagree. In reviewing a challenge based on the sufficiency of the evidence, this Court conducts a de novo review. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). A conviction will be affirmed when, viewing the evidence in the light most favorable to the prosecutor, a rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

This Court has previously stated that imperfect self-defense can mitigate second-degree murder to a voluntary manslaughter. *People v Butler*, 193 Mich App 63, 67; 483 NW2d 430 (1992). This Court further noted “[t]he doctrine applies only where the defendant would have been entitled to self-defense had he not been the initial aggressor.” *Id.* A defendant is entitled to self-defense if “he honestly and reasonably believe[d] that he [was] in imminent danger of death or great bodily harm and that it [was] necessary for him to exercise deadly force.” *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002). The doctrine “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.” *Id.* In addition, an

individual can only use the amount of force that is necessary to defend himself. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993). Similarly, deadly force may be used to defend another when there is a reasonable belief such force is needed to prevent death or great bodily harm. *People v Kurr*, 253 Mich App 317, 321; 654 NW2d 651 (2002).

Defendant's contention that the doctrine of imperfect self-defense applies in the present case is without merit. Defendant was not entitled to self-defense for a number of reasons independent of his role as the aggressor. At trial, the only evidence that defendant was fearful of the victim was defendant's statement to the police in which he stated that the victim, holding something in his hand, began to walk towards defendant as they were arguing. Defendant never explicitly stated that he feared for his life. Furthermore, he was not able to identify the alleged object being held by the victim, though defendant acknowledged that the object was definitely not a gun. When police examined the body of the victim, a pocket knife was found in the victim's pocket, but no weapon was found in his hands or near his body. Therefore, defendant cannot establish that he had an honest and reasonable fear that his life was in danger.<sup>1</sup>

Even if defendant did establish that he had an honest and reasonable fear, he cannot establish that his actions were necessary to neutralize the threat. Defendant shot the victim five times, each time in the chest or in close proximity to the chest. Because the victim did not have a gun, defendant could have likely neutralized the victim without applying deadly force. Furthermore, he has failed to establish that retreat was unavailable.

Because several factors in addition to defendant's role as the aggressor prevented entitlement to self-defense, the doctrine of imperfect self-defense is inapplicable.

Affirmed.

/s/ Richard A. Bandstra  
/s/ E. Thomas Fitzgerald  
/s/ Jane E. Markey

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<sup>1</sup> Without providing any legal support, defendant argues that his low cognitive ability favors his position that he was acting in self-defense. There is no evidence in the record to support the claim that defendant had a below average cognitive ability.