

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH ALAN WILSON,

Defendant-Appellant.

UNPUBLISHED

April 29, 2008

No. 275200

Washtenaw Circuit Court

LC No. 05-000002-FC

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

PER CURIAM.

Defendant appeals as of right his conviction for involuntary manslaughter, MCL 750.321. Defendant was sentenced to 36 months to 15 years' imprisonment with credit for 295 days. Defendant's argument on appeal focuses on the sufficiency of the evidence underlying his involuntary manslaughter conviction. We affirm.

Defendant contends that the prosecutor did not present sufficient evidence to negate his self-defense defense. Specifically, defendant asserts there was insufficient evidence that defendant used excessive force and that he did not act in self-defense. We disagree. In reviewing the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994). In reviewing a sufficiency challenge, we are mindful that the jury had the special opportunity to assess the credibility of the witnesses who appeared before it. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). In *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993), this Court stated:

In Michigan, the killing of another 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. A defendant is not entitled to use any more force than is necessary to defend himself. [Citations omitted.]

At trial, there was testimony that defendant repeatedly swung his fists at the victim, who approached defendant following an argument. Defendant eventually gained the upper hand in the altercation and was on top of the victim on the ground. Defendant admitted to hitting the victim more than once and to hitting the victim while they were on the ground. He hit the victim in the general area of the face. Defendant did not contest that he hit the victim in the mouth with

such force that he could have knocked the victim's teeth out. Further, there was testimony by a police officer that a witness to the fight reported that defendant was on top of the victim hitting him repeatedly in the face. Dr. Bader Cassin, the medical examiner, testified that, at a minimum, the victim was hit in the mouth and received a blow to each side of his face. Even after defendant had the advantage and was on the ground on top of the victim, he continued his attack until blood was spattered on the walls. Defendant had the opportunity to get up and walk away but he failed to do so.

Additionally, a description of the scene supported that a substantial struggle had taken place. A large amount of blood was on the victim's face. There was a large blood spatter on the wall of the apartment. There were other bloodstains that were higher on the wall and separated from the main bloodstain. The evidence indicated that the blood was the result of more than one assaultive event due to the angle of the blood spatters. The victim's shirt was also torn, and his sweatpants were pulled down revealing part of his buttocks. The legs of a table were broken. Magazines, bills, paperwork and mail were strewn around on the end of the table and a lamp was knocked over.

Dr. Cassin testified that the cause of death was multiple blunt injuries, primarily to the head, which resulted in brain swelling. The victim's skull received an impact from an upward blow. He had cut lips, blackened eyes, and missing teeth. There was also evidence of injury to his chest, abdomen, legs and right hand. There was a very deep bite on the back left side of the victim's tongue, which was indicative of a seizure that could have been caused by brain swelling.

Although defendant was significantly smaller than the victim, defendant's injuries were significantly less severe. Defendant's hands were bruised and there was a small piece of skin missing from a knuckle. Defendant was able to simply get up and walk away following the assault.

Viewed in the light most favorable to the prosecution, there is sufficient evidence for a rational trier of fact to determine that the essential elements of involuntary manslaughter were proven beyond a reasonable doubt and that defendant used excessive force when defending himself against the victim. Defendant was not entitled to use more force than was necessary to defend himself. *Kemp, supra*.

We affirm.

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