

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MELINDA ROGERS,

Defendant-Appellant.

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UNPUBLISHED

May 1, 2008

No. 277447

Wayne Circuit Court

LC No. 06-010888-01

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

PER CURIAM.

Defendant appeals as of right her conviction of felonious assault, MCL 750.82, entered after a bench trial. Defendant was sentenced to 18 months' probation. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The elements of felonious assault are: "(1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery." *People v Chambers*, 277 Mich App 1, 8; 742 NW2d 610 (2007). At trial, defendant admitted that she stabbed the victim in the chest with a knife, but asserted that she did so in self-defense. On appeal, defendant does not challenge the trial court's findings that an assault with a dangerous weapon occurred. Rather, she argues that the trial court erred by not "giving credibility" to her defense of self-defense. We disagree.

In rejecting defendant's claim of self-defense, the trial court found that the victim was not attempting to harm defendant when she stabbed him and concluded that defendant's actions were not justified by the victim's conduct preceding the stabbing. We review a trial court's findings of fact in a bench trial for clear error, giving consideration "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C); *People v Gillam*, 479 Mich 253, 260; 734 NW2d 585 (2007); *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). A finding is clearly erroneous if, after a review of the entire record, we are left with a definite and firm conviction that a mistake has been made. *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000). "Self-defense requires both an honest and reasonable belief that the defendant's life was in imminent danger or that there was a threat of serious bodily harm." *People v George*, 213 Mich App 632, 634-635; 540 NW2d 487 (1995). If evidence of self-defense is introduced, the prosecution has the burden of disproving the claim beyond a reasonable doubt. *People v James*, 267 Mich App 675, 677; 705 NW2d 724 (2005). When considering a challenge to the sufficiency of the

evidence in a bench trial, we view the evidence in a light most favorable to the prosecution to determine if the trial court could have found the essential elements of the crime were proven beyond a reasonable doubt. *People v Lanzo Constr Co*, 272 Mich App 470, 473-474; 726 NW2d 746 (2006). All conflicts with regard to the evidence must be resolved in favor of the prosecution. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005).

Defendant testified that she stabbed the victim because he was acting in a menacing manner towards her, pounding on her apartment door, yelling unpleasant comments at her and preventing her from leaving, rendering her afraid for her safety. She also testified that the victim previously threatened her and broke windows in her apartment and she noted that the victim is substantially larger than she is, in both height and weight. However, the victim testified that he was not acting aggressively in any way toward defendant at the time of the incident and that defendant stabbed him without provocation. He also denied having previously threatened defendant, or having broken her windows.

The victim's testimony, if credited, was sufficient to disprove defendant's assertion of self-defense beyond a reasonable doubt. Thus, the question whether defendant acted in self-defense was entirely dependent on resolution of the conflicting testimony offered by the victim and the defendant at trial. This resolution was wholly within the province of the trial court, and, plainly, it found the victim's testimony more credible than defendant's testimony. Giving due deference to the trial court's superior ability to judge the credibility of the witnesses appearing before it, we are not left with a firm and definite conclusion that the trial court was mistaken in its determination that defendant did not act in self-defense when she stabbed the victim. *Sexton, supra*; *Wolfe, supra*.

Defendant further argues that the trial court erred by failing to consider the defense of imperfect self-defense. Because defendant did not raise a claim of imperfect self-defense below, our review of this unpreserved question is for plain error affecting substantial rights. *People v Young*, 472 Mich 130, 143; 693 NW2d 801 (2005). Under current case law, imperfect self-defense can mitigate second-degree murder to voluntary manslaughter where – and only where – the defendant would have been entitled to self-defense had he not been the initial aggressor. *People v Butler*, 193 Mich App 63, 67; 483 NW2d 430 (1992). Thus, it is inapplicable here. Defendant contends that imperfect self-defense should be extended to circumstances in which a defendant acts unreasonably in a heated situation and to cases, such as the present one, that do not involve a homicide. However, because defendant's argument depends on extending the doctrine of imperfect self-defense beyond its boundaries under current case law, it is manifest that she has not established plain error because a trial court cannot plainly err by correctly applying existing case law.

Defendant also argues that the trial court erred by admitting the victim's medical records over her objection, contending that the prosecution violated its discovery obligations by not providing the defense with copies of these records before trial. This issue is without merit.

Any possible error with regard to the admission of these medical records does not merit relief because it is not more probable than not that any such nonconstitutional evidentiary error was outcome determinative. *People v Jones*, 270 Mich App 208, 212; 714 NW2d 362 (2006). The extent of the victim's injuries was not directly relevant to the elements of the offense of felonious assault of which defendant was convicted. As noted above, the elements of this

offense are (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery. *Chambers, supra*. There is no requirement that a victim actually be injured, let alone be injured to any particular degree. The trial court's remarks in explaining its verdict provide no indication that it relied on the extent of the victim's injuries or the medical records in any way in convicting defendant of felonious assault. Thus, the admission of the medical records was not more likely than not outcome determinative.

Finally, defendant argues that the prosecutor's failure to provide her with copies of the victim's medical records before trial violated her due process rights because, if defense counsel had been provided a copy of these records before trial, "she may very well have received potential exculpatory evidence that could have been provided to the court by subpoena of medical personnel for the trial." First, this issue is not properly presented because it is not within the scope of defendant's statement of questions presented. *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000). Moreover, a required element to establish a due process violation based on the prosecution's failure to provide material exculpatory evidence is a showing by the defendant of a reasonable probability that disclosure of the evidence to the defense would have resulted in a different outcome. *People v Schumacher*, 276 Mich App 165, 176-177; 740 NW2d 534 (2007). Defendant's allegation of mere potential exculpatory evidence plainly does not meet this standard.

We affirm.

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