

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL A. HUDSON,

Defendant-Appellant.

UNPUBLISHED

January 9, 1998

No. 197832

Recorder's Court

LC No. 96-003122

Before: MacKenzie, P.J., and Hood and Hoekstra, JJ.

MEMORANDUM.

Defendant was convicted of involuntary manslaughter, MCL 750.321; MSA 28.553, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), MCL 750.227b; MSA 28.424(2). Defendant received a sentence of two years' imprisonment on the felony-firearm conviction and an enhanced sentence of ten to twenty-five years' imprisonment on the manslaughter conviction, reflecting his status as a fourth offender, MCL 769.12; MSA 28.1084. Defendant appeals as of right. We affirm.

Viewing the evidence in a light most favorable to the prosecutor, we find that a rational trier of fact could find beyond a reasonable doubt that defendant was not acting in self-defense when he shot the victim in the back of the head. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Fortson*, 202 Mich App 13, 19-20; 507 NW2d 763 (1993); *People v Deason*, 148 Mich App 27, 31; 384 NW2d 72 (1985).

Defendant has waived appellate review of his claim that the trial court erroneously admitted the preliminary examination testimony of a witness who died before trial by acceding to its admission. *People v McCray*, 210 Mich App 9, 14; 533 NW2d 359 (1995). Nevertheless, the prior testimony was properly admitted where the witness was unavailable due to death, where defense counsel engaged in extensive cross-examination of the witness during the preliminary examination, and where defense counsel attempted, albeit unsuccessfully, to elicit testimony from the witness on cross-examination that would aid defendant's self-defense defense. MRE 804(b)(1); *Ohio v Roberts*, 448 US 56, 66, 70-71;

100 S Ct 2531; 65 L Ed 2d 597 (1980); *People v Walter Moore*, 78 Mich App 294, 297-298; 259 NW2d 351 (1977).

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Harold Hood

/s/ Joel P. Hoekstra