STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DELISA L. KELLEY,

Defendant-Appellant.

UNPUBLISHED
May 26, 1998

No. 198440
Detroit Recorder's Court
LC No. 96-000828

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

PER CURIAM.

Defendant was convicted of voluntary manslaughter, MCL 750.321; MSA 28.553, following a bench trial[1]. The court sentenced defendant to five to fifteen years' imprisonment, and she appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence to prove beyond a reasonable doubt that she was not acting in self-defense. We disagree.

When reviewing a claim of insufficient evidence following a bench trial, this Court views the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). "[T]he 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." *People v Fortson*, 202 Mich App 13, 19-20; 507 NW2d 763 (1993)(citation omitted). A defendant may not use more force than is necessary to defend herself. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993). Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt. *Fortson, supra.*

We find that the court did not err in determining that the prosecution had proved, beyond a reasonable doubt, that defendant was not acting in self-defense when she stabbed the victim. There was sufficient evidence that when defendant stabbed the victim, she was not defending herself from him. Although the victim threatened to "slap the shit" out of defendant, there was testimony that the victim

never swung at defendant and never hit or kicked her. Moreover and more importantly, even if defendant and the victim had a physical altercation, it ended when the victim began fighting with defendant's brother. Thereafter, any threat to defendant was abated for the moment. It was at that point, however, that defendant went into her kitchen, returned with a long-bladed knife in each hand, and stabbed decedent in the back. There was evidence that thereafter, as the victim was attempting to leave defendant's premises, defendant stabbed him again. Finally there was testimony that as the victim was attempting to get into his automobile to leave, defendant stabbed him for the third time. The victim sustained eight stab wounds. The evidence strongly supports that defendant stabbed the victim when she was clearly not in imminent danger[2]. We note that the court found that the defendant's brother's testimony that the victim was coming after defendant during the last two stabbings was not credible. Special deference is given to the trial court's assessment of witness credibility. *People v Brannon*, 194 Mich App 121, 131; 486 NW2d 83 (1992). Viewing the evidence in a light favoring the prosecution, the evidence was sufficient to support the court's finding that defendant's self-defense claim failed where defendant repeatedly stabbed the victim at a time when there was no imminent threat of death or serious bodily harm to her.

In so ruling, we note that the trial court did not ignore that the victim was unlawfully on defendant's property, had threatened to take her baby and fought with her brother. It considered those facts and found that there was "hot blood" at the time of the stabbings. For that reason, the trial court found defendant guilty of the lesser charge of voluntary manslaughter. See *Forston*, *supra* at 19.

Defendant next argues that the court made insufficient findings of fact and conclusions of law regarding her claim of self-defense. We disagree.

MCR 2.517(A) and MCR 6.403 require the court in a bench trial to state its findings of fact and conclusions of law on the record. Over-elaboration and detail or particularization of facts is not necessary. MCR 2.517(A)(2). This Court has held that even where a trial court's findings are brief, they are sufficient under MCR 2.517(A) if they establish that the court was aware of the relevant issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). After reviewing the record, we find that the court's findings regarding defendant's self-defense theory were sufficient although they were brief. The court found that defendant had stabbed decedent at least eight times with two deadly knives. The court clearly noted that one of the issues to be decided was whether defendant "believed herself to be in imminent danger of death or great bodily harm." The court then concluded that the evidence in the case failed to support defendant's claim of self-defense. The court's later findings based on the evidence indicate that it was aware of the necessary facts, including that defendant pursued the victim out the door as he tried to leave. Because the court's total findings indicate that it was aware of the facts and the issues and because the court stated its conclusions, we find no error requiring reversal.

Finally, defendant argues that she was denied a fair trial when the trial court commented on her failure to testify about her claim of self-defense. She concludes that the trial court's comments improperly placed the burden on her to prove self-defense. We disagree.

A defendant in a criminal case has a constitutional right against compelled self-incrimination and may elect to rely on the presumption of innocence. US Const, Am V; Const 1963, art 1, § 15; *People v Fields*, 450 Mich 94, 108; 538 NW2d 356 (1995). "To effectuate this right, no reference or comment may be made regarding defendant's failure to testify." *Id*., citing *Griffin v California*, 380 US 609; 85 S Ct 1229; 14 L Ed 2d 106 (1965). Constitutional issues are reviewed de novo on appeal. *People v Pitts*, 222 Mich App 260, 263; 564 NW2d 93 (1997).

At trial, the defense argued theories of self-defense and defense-of-others. During final argument, defendant's counsel argued that defendant believed her child was in serious danger. The following colloquy took place:

> *The Court:* But having a tug-of-way [sic] over taking the baby is different than believing that if he's allowed to remove the baby from the home the baby is in imminent danger of death and great bodily harm.
>
> *Defendant's counsel:* To you or to I it may not seem that way. The question is, did it seem that way to the Defendant. Could the Defendant trust that if she allowed that –
>
> *The Court:* Mr. Dean, at the risk of commenting on your client not taking the stand, but you know me. I don't have any fears about saying anything that comes into my head.
>
> You had an opportunity to have a witness get on the stand and tell me that. That hasn't happened in this case. I don't draw any negative inference from the fact that your client hasn't testified, but I'm certainly not going to draw affirmative inferences about what was in her mind absent her testimony. I've got to draw on conclusions about what was in her mind based on her conduct and based on the testimony of other witnesses to the effect.

We find that defendant was not denied a fair trial as a result of the court's comment. This was a bench trial, not a jury trial. Thus, there was no possibility that a jury was improperly influenced by the court's comments. Moreover, because it was a bench trial, the judge "is presumed not be prejudiced and to follow the law." *People v Oliver*, 170 Mich App 38, 49; 427 NW2d 898 (1988), modified on other grounds 433 Mich 862; 444 NW2d 527 (1989).

The comment does not indicate that the trial court was considering defendant's failure to testify. To the contrary, the comment informed counsel that the trial court would not consider counsel's argument as to what defendant's state of mind was where there was little or no evidence or testimony to support the claims as to her state of mind. The court simply reminded the defendant that if defendant wanted to present evidence as to her state of mind, she had the opportunity to do so. Where she did not take the opportunity, the court was not willing to guess at her state of mind or make favorable inferences where there was no foundation for such inferences. The trial court specifically stated that it was not drawing negative inferences from defendant's failure to testify.

In addition, the court's comments did not place the burden on defendant to prove she acted in self-defense. Significantly the trial court clearly stated in rendering its verdict that the prosecution, and not defendant, had the burden of proof, including the burden to prove beyond a reasonable doubt that she was not acting in self-defense. Where there was ample evidence that defendant did not act in self-defense and where the trial court's comments did not improperly shift the burden or deny defendant a fair trial, there is no error requiring reversal.

Affirmed.

/s/ Harold Hood
/s/ Barbara B. MacKenzie
/s/ Martin M. Doctoroff

[1] Defendant was initially charged with second-degree murder, MCL 750.317; MSA 28.549.

[2] In support of her self-defense argument, defendant points out that she stabbed the victim only after he threatened to take her baby and fought with her brother. While this appears to be true, these facts are relevant to the issue of defense-of-others, and not the self-defense issue. The trial court rejected the defense-of-others theory, and the issue of whether the trial court's ruling in this regard was error is not before this Court for review. See *Marx v Dep't of Commerce*, 220 Mich App 66, 81; 558 NW2d 460 (1996).