STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHMOND J. GRAY,

Defendant-Appellant.

UNPUBLISHED
October 27, 1998

No. 197151
Recorder's Court
LC No. 96-001026

Before: Kelly, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. Defendant was sentenced to five years and ten months to ten years in prison. We affirm.

Defendant first argues that the prosecution presented insufficient evidence to disprove his theory of self-defense beyond a reasonable doubt. We disagree. Once evidence of self-defense is introduced, the prosecution bears the burden of disproving it beyond a reasonable doubt. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996).

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. *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990). Here, the evidence presented at trial revealed that an argument and physical struggle occurred between defendant and the complainant before defendant stabbed the complainant in the neck. Although the complainant and defendant simultaneously attempted to punch each other before defendant stabbed the complainant and although defendant was significantly smaller in size than the complainant, there was no evidence presented that revealed that it was necessary for defendant to resort to the use of a knife in defending himself from the complainant. A defendant is not entitled to use any more force than is necessary to defend himself. *People v Kemp*, 202 Mich App 318, 322-323; 508 NW2d 184 (1993). Accordingly, the evidence was sufficient for a rational trier of fact to find beyond a reasonable doubt that the prosecution disproved defendant's self-defense theory.

Defendant also argues that the prosecution presented insufficient evidence to convict him of assault with intent to do great bodily harm less than murder. Again, we disagree. In determining whether sufficient evidence has been presented in a bench trial, this Court views the evidence in a light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). Circumstantial evidence and reasonable inferences drawn from the evidence may be sufficient to prove the elements of a crime. *Truong*, *supr*a at 337.

The elements of the crime of assault with intent to do great bodily harm less than murder are (1) an attempt or threat with force or violence to do corporeal harm to another (an assault), (2) coupled with an intent to do great bodily harm less than murder. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). Intent to do great bodily harm can be inferred from the "act itself, the means employed and the manner employed." *People v Leach*, 114 Mich App 732, 735; 319 NW2d 652 (1982). Here, defendant assaulted the complainant by using a hunting knife to stab the complainant in the neck. The complainant's injury required medical attention and he was operated on at the hospital. We conclude that the evidence was sufficient to give rise to an inference of the necessary intent. Accordingly, when viewed in a light most favorable to the prosecution, the evidence was sufficient to support defendant's conviction for assault with intent to do great bodily harm less than murder.

Defendant's final argument is that his sentence is disproportionate. We disagree. Our review of a defendant's sentence is limited to whether the sentencing court abused it discretion. *People v Albert*, 207 Mich App 73, 74; 523 NW2d 825 (1994). Defendant was sentenced to serve a minimum sentence of five years and ten months, which is within the sentencing guidelines. A sentence imposed within the applicable sentencing guidelines' range is presumed to be proportionate. *People v Kennebrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996). However, even a sentence within the applicable guidelines' range can be disproportionate in unusual circumstances. *People v Milbourn*, 435 Mich 630, 661, 654; 461 NW2d 1 (1990). Here, defendant has failed to establish that there were any unusual circumstances which would render his sentence disproportionate. Furthermore, given defendant's prior record, combined with his present conviction for stabbing the complainant in the neck, we conclude that defendant's sentence is proportionate to the circumstances surrounding his criminal background and the offense. Thus, the trial court did not abuse its discretion in sentencing defendant as described above.

Affirmed.

/s/ Michael J. Kelly
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy