

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEROME MARTIN,

Defendant-Appellant.

UNPUBLISHED

August 3, 1999

No. 190998

Recorder's Court

LC No. 95-004026 FH

Before: Kelly, P.J., and Jansen and White, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to a mandatory two-year prison term for the felony-firearm conviction, to be followed by five years' probation for the assault conviction. Defendant appeals by right, and we affirm.

Defendant's convictions arose from an incident that occurred at a store in Detroit where he was employed. The complainant testified that he entered the store for the second time on a particular day and was apparently wrongfully identified by the clerks as a returning shoplifter. One of the clerks tossed defendant a gun, and defendant tried to keep the complainant from leaving the store. When the complainant tried to force his way past defendant, defendant shot the complainant in the arm. Subsequently, defendant fired four more shots into the complainant's stomach and chest. By the store clerks' less than consistent accounts, the complainant had been in the store stealing and threatening them, but the shooting took place outside in the parking lot. By defendant's account, he was armed with the store's handgun while taking the trash out. In the parking lot, the complainant indicated that because defendant had chosen to "stick up for" the store's "Arab" clerks, he was going to "stick up" defendant. Defendant conceded that the complainant did not produce a weapon, but nevertheless testified that he felt that shooting the complainant a number of times was justified by his reasonable apprehension.

Defendant's only argument on appeal is that the prosecution failed to produce sufficient evidence that his acts were not justified by self-defense. This Court reviews such a claim by looking at

the evidence in the light most favorable to the prosecution and determining if a rational trier of fact could have found that the necessary elements were established beyond a reasonable doubt. *People v Breck*, 230 Mich App 450, 456; 584 NW2d 602 (1998).

A person is entitled to use deadly force in their own defense if, under the circumstances as they appear to that person, the person forms a reasonable and honest belief that the use of such force is necessary to avoid being killed or receiving serious bodily harm. See CJI2d 7.15. See, also, *People v Helflin*, 434 Mich 482, 502; 456 NW2d 10 (1990); *People v Dabish*, 181 Mich App 469, 478-479; 450 NW2d 44 (1989). “Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt.” *Truong, supra* at 337.

Here, even if the trial court believed everything defendant said, which it did not,¹ there was sufficient evidence to conclude beyond a reasonable doubt that defendant’s belief that shooting the complainant multiple times was necessary to protect himself from death or serious injury was objectively unreasonable. Hence, there was sufficient evidence presented for a rational trier of fact to find that the prosecution had disproved defendant’s claim of self-defense beyond a reasonable doubt.

Affirmed.

/s/ Michael J. Kelly

/s/ Kathleen Jansen

/s/ Helene N. White

¹ The trial court questioned the credibility of both the complainant’s and defendant’s testimony.