

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DWAYNE ROBINSON,

Defendant-Appellant.

UNPUBLISHED

November 16, 1999

No. 202450

Recorder's Court

LC No. 96-003330

Before: Cavanagh, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of voluntary manslaughter, MCL 750.321; MSA 28.553, and sentenced to five to fifteen years' imprisonment. Defendant now appeals as of right. We affirm.

Defendant first argues that the prosecution presented insufficient evidence to support his conviction, given evidence that he acted in self-defense. We disagree. When reviewing the sufficiency of the evidence presented at trial, we must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

The elements of voluntary manslaughter are: (1) the defendant killed the victim in the heat of passion, (2) the passion was caused by an adequate provocation, (3) the killing occurred before a reasonable time had passed to allow the heat of passion to subside, and (4) the defendant possessed the intent to kill or to commit serious bodily harm. *People v Sullivan*, 231 Mich App 510, 518; 586 NW2d 578 (1998); *People v Hess*, 214 Mich App 33, 38; 543 NW2d 332 (1995). However, "the killing of another person 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). Once the defendant introduces evidence of self-defense, the prosecutor must then prove beyond a reasonable doubt that the defendant did not act in self-defense. *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

In the present case, viewing the evidence in the light most favorable to the prosecutor, we conclude that the prosecutor presented sufficient evidence to prove the elements of voluntary manslaughter and to prove that defendant did not act in self-defense. Three witnesses testified consistently regarding the events that led to the victim's death. These witnesses testified that defendant was angry and aggressive when he entered the victim's house and that defendant instigated a fistfight with the victim. One of these witnesses also testified that he observed defendant stab the victim with a small knife attached to a key chain during that altercation. All three witnesses testified that no one in the house, aside from defendant, possessed a weapon or threatened to retrieve a gun. This evidence allowed the jury to conclude that defendant intended to kill or cause serious bodily harm to the victim and that defendant killed the victim in the heat of passion and not in self-defense.

Portions of defendant's testimony also supported the jury's verdict. Defendant, himself, testified that he fought with the victim and that he stabbed the victim with a three-inch knife that was attached to his key chain. Defendant did not clearly assert that he stabbed the victim in self-defense. He testified that he struggled to break free from the victim as the victim held him on the ground and that only after breaking free did he realize that the victim had been stabbed. Defendant in effect admitted that he did not stab the victim in self-defense when he claimed that the stabbing was unintentional, stating, "Evidently, when I grabbed him, tried to get him off me, the knife had to puncture him. Evidently. It was not intentionally at all." "A finding that a defendant acted in justifiable self-defense necessarily requires a finding that the defendant acted intentionally" *Heflin, supra* at 503. Defendant also admitted that he did not see the victim or anyone else possess a weapon.

Although portions of the testimony of defendant and his girlfriend contradicted the testimony of prosecution witnesses, this does not render the evidence presented insufficient. When reviewing a claim that the evidence was insufficient to support the verdict, we must not interfere with the role of the jury to weigh the evidence and determine the credibility of testimony. *Wolfe, supra* at 514-515. We conclude that the prosecutor presented sufficient evidence to allow the jury to find defendant guilty of voluntary manslaughter.

Defendant also argues that the trial court erred in denying his motion for mistrial on the ground that he was prejudiced by the introduction of evidence regarding a prior dismissed charge.¹ We review the trial court's ruling on a motion for mistrial for an abuse of discretion. *People v Griffin*, 235 Mich App 27, 36; 597 NW2d 176 (1999). An abuse of discretion occurs only when denial of the motion deprives the defendant of a fair and impartial trial. *People v Wolverton*, 227 Mich App 72, 75; 574 NW2d 703 (1997).

Defendant bases his argument on a reference to a prior criminal charge against defendant during the testimony of a police officer. The prosecutor was asking the officer about why defendant's girlfriend was needed to be present at a preliminary examination a few months before trial, and the officer stated, "Because in addition to the charges that were lodged against [defendant], he was also charged with assault with intent to commit murder on [his girlfriend], great bodily harm." The prosecutor claimed that it was seeking to elicit testimony regarding the girlfriend's failure to attend the preliminary examination in order to demonstrate that she was afraid of defendant, and that her testimony in support of defendant at trial was motivated by this fear. Although the comment regarding a prior criminal charge was not

relevant to the present case and should not have been mentioned, the trial court questioned the officer to clarify for the jury that the charge had been dismissed and had no bearing on the trial at hand. Moreover, “not every instance of mention before a jury of some inappropriate subject matter warrants a mistrial.” *Griffin, supra* at 36. In light of other testimony that informed the jury that defendant had also assaulted his girlfriend on the night the victim was killed, we conclude that the mention that defendant was charged with assault for this conduct was harmless. Accordingly, the trial court did not abuse its discretion in denying defendant’s motion for mistrial because he was not denied a fair and impartial trial.²

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Peter D. O’Connell

¹ Although this issue was stated in terms of whether the trial court abused its discretion in admitting the evidence, defendant presents the argument in the context of the trial court’s denial of his motion for mistrial.

² To the extent that the admission of the evidence itself was error, we would conclude that the error was harmless because defendant has not demonstrated that “it is more probable than not that the error was outcome determinative.” *People v Lukity*, 460 Mich 484, 496; 596 NW2d 607 (1999).