STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHEN COREY FRENCH,

Defendant-Appellant.

UNPUBLISHED
March 2, 2001

No. 218918
Wayne Circuit Court
LC No. 95-001827

Before: Hoekstra, P.J., and Whitbeck and Meter, JJ

PER CURIAM.

Defendant appeals by right from his convictions following a bench trial 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). The trial court sentenced him to two years' imprisonment for the felony-firearm conviction and to a consecutive four to fifteen year term for the involuntary manslaughter conviction. We affirm.

Defendant challenges the sufficiency of the evidence supporting his convictions. In reviewing a challenge to the sufficiency of the evidence in a bench trial, we review the evidence "in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Chandler*, 201 Mich App 611, 612; 506 NW2d 882 (1993). Although defendant challenges the sufficiency of the evidence supporting the felony-firearm conviction, that challenge is reduced to whether he committed a felony; consequently, both challenges can be resolved by considering the evidence supporting the involuntary manslaughter conviction.

Defendant's sufficiency argument rests solely on his contention that he killed the victim in self-defense. He argues that "without question, [d]efendant was acting in self-defense . . . [and therefore] . . . should have been acquitted." We disagree. To lawfully defend himself using deadly force, a defendant must honestly and reasonably believe himself to be in immediate danger of death or serious bodily harm. *People v Heflin*, 434 Mich 482, 502, 515; 456 NW2d 10 (1990). In the instant case, the trial court found that, based on the circumstances, defendant did not *reasonably* believe himself to be in immediate danger.

The record supports this finding. Although defendant testified that he saw the victim's gun, this gun was never found. The defense theory that the victim's brother removed the gun

during the confusion that followed the shooting was a possible explanation for the gun's absence. Nevertheless, it was also possible that the victim had no gun and that defendant simply overreacted, unreasonably, to what he feared was the victim reaching for a gun. As stated by the court in its findings:

> The [c]ourt notes that the deceased . . . wouldn't have pulled out a gun, . . . even if he was a hit man. Why would he pull out a gun in front of his friends, in front of the police, in a bar that's full around that time?
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> The [c]ourt notes that there was evidence that the defendant did not mention the deceased having this weapon at the time he was apprehended by the police at the scene. . . . No handgun . . . was taken from the deceased . . . . [T]he defendant didn't bring it up until much later that the . . . deceased had the weapon. So that the claim was not reliable.
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> . . . And when the [c]ourt considers the surrounding circumstances, . . . the [c]ourt believes that the prosecutor has proven that there was a reasonable belief that deadly force was unnecessary . . . . So that the claim of self-defense fails.

The record supported these findings. We will not weigh the credibility of witnesses or substitute our assessment of the testimony for that of the trial court. MCR 2.613(C); MCR 6.001(D); *People v Eggleston*, 149 Mich App 665, 671; 386 NW2d 637 (1986). See also *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). We further note that there was no testimony that the victim actually *pointed* a gun at defendant. Viewing the evidence in the light most favorable to the prosecution, we reject defendant's argument that there was insufficient evidence supporting the trial court's rejection of defendant's self-defense argument. Accordingly, there was sufficient evidence supporting defendant's convictions.

Defendant also challenges the trial court's denial of his motion to dismiss on double jeopardy grounds. We review double jeopardy issues de novo. *People v Squires*, 240 Mich App 454, 456; 613 NW2d 361 (2000). Defendant's first trial resulted in a sua sponte order of mistrial after that trial court concluded that no reasonable alternative to a mistrial existed. During the first trial, defendant either mistakenly or purposely refused to keep his testimony within the scope permitted by the trial court's orders. In fact, defendant's ultimate testimony consisted of the exact subject matter that the trial court had prohibited him from mentioning: testimony regarding specific, prior acts of violence (specifically, killing people) committed by the victim. See *People v Harris*, 458 Mich 310, 317-320; 583 NW2d 680 (1998) (indicating that a defendant alleging self-defense may not testify to specific, prior acts of violence committed by the victim but must limit himself to testimony about the victim's violent reputation). The record indicates that after this error occurred, defense counsel objected to plaintiff's proposed curative instruction, and the trial court concurred that the instruction was worded too strongly to be fair to defendant. The trial court doubted whether a fair curative instruction could be propounded. Thus, it concluded that manifest necessity justified a mistrial. Before the second trial, defendant moved to dismiss on double jeopardy grounds, arguing that a mistrial in the first trial should not have been declared.

We find no error requiring reversal in the denial of defendant's motion to dismiss on double jeopardy grounds. An "error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence." *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999). In the instant matter, defendant and his attorney may have been confused generally regarding the difference between reputation evidence and specific acts evidence. Nevertheless, parties are expected to comply with court orders regarding the admissibility of evidence. On several occasions, defendant was unequivocally warned by the trial court regarding what he could and could not say, and in two instances the trial court specifically instructed defendant that he could not testify that he knew the victim had killed people. Defendant violated that order, resulting in the sua sponte order of mistrial. Because of defendant's direct contribution to the ruling, whether by negligence or more deliberate conduct, reversal of the instant convictions is unwarranted. *Id*.

Moreover, double jeopardy does not bar a retrial if manifest necessity requires a mistrial during the first trial. *People v Echavarria*, 233 Mich App 356, 363; 592 NW2d 737 (1999). Given defendant's repeated references to specific instances of violence by the victim, we cannot say that the first trial court erred in concluding that a curative instruction would not remove the prejudicial effect of the errors and that a mistrial was therefore warranted by manifest necessity. Accordingly, retrial was permitted. *Id*.

Affirmed.

/s/ Joel P. Hoekstra
/s/ William C. Whitbeck
/s/ Patrick M. Meter