

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WOODROW BRUCE WEEKS,

Defendant-Appellant.

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UNPUBLISHED

December 21, 2001

No. 224742

Genessee Circuit Court

LC No. 99-004542-FC

Before: Murphy, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to life imprisonment on the second-degree murder conviction, and to two years' imprisonment on the felony-firearm charge to be served consecutively. Defendant appeals as of right. We affirm.

This case arises out of defendant's fatal shooting of the victim with a rifle in the home of defendant's girlfriend. Defendant claimed that he shot the victim in self-defense.

Defendant first argues that he was denied his right to a fair trial when the trial court allowed the prosecutor to introduce evidence regarding a 1994 fatal shooting, in which defendant was charged and acquitted after claiming that his actions in shooting that victim were taken in self-defense. This Court reviews a decision to admit other acts evidence under MRE 404(b) for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). We find it unnecessary to determine whether the trial court abused its discretion in allowing the introduction of the evidence because the admission of the evidence does not warrant a new trial, in that, any resulting error was harmless. MCL 769.26; *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999).

It is well-settled law in Michigan that "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). A defendant is not entitled to use any more force than is necessary to defend himself. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993). Here, a review of the record indicates that defendant and the victim were arguing, and that the victim was merely shoving defendant around before the shooting. Defendant admitted that he and the victim had

several altercations in the past involving shoving; however, faced with pushing and shoving on this particular occasion, defendant used lethal force when he shot the victim.

Defendant's own testimony suggests that he did not reasonably believe his life was in imminent danger or that there was a threat of serious bodily harm. During the alleged attack, defendant left the kitchen area, where he was arguing with the victim, and went to the bathroom to urinate. Defendant indicated that, as he was on the way to the bathroom, the victim was screaming at him and pushed him. One of defendant's children corroborated defendant's testimony that the victim followed defendant to the bathroom and that all the victim was doing was yelling and giving defendant "little pushes." The fact that defendant could extract himself from the situation and get away from the victim to use the bathroom undercuts defendant's argument that he honestly and reasonably believed that he was in imminent danger or that there existed a threat of serious bodily harm. It is illogical that if the victim intended to kill or seriously injure defendant, he would allow defendant to use the bathroom prior to doing so.

Additionally, the scientific evidence that was presented does not support defendant's contention that he acted under the reasonable belief of imminent harm. According to defendant, the victim was walking away, and then "lunged back" at him. Defendant testified that he jumped, and then "it was ugly," implying he shot the victim. However, the medical examiner, who performed the autopsy on the victim, testified that the bullet that killed the victim entered the right side of the back of his head and exited from the left side of the back of the head. The medical examiner described the path of the bullet as going parallel to the victim's shoulders, from right to left, through the back of the victim's head. The examination indicated that the bullet was fired from more than eighteen inches from the victim's head. Defendant's girlfriend testified that, when defendant aimed to fire the rifle, he held the rifle with the butt of the gun to his shoulder, with his left arm steadying the barrel. This evidence suggests that defendant had enough time to grab a nearby rifle, aim from a distance, and shoot the victim. The fatal shot was fired, not at close range in a struggle, but from a distance and hit the victim in the back of the head. All of these factors militate against defendant's self-defense argument.

Moreover, the record also indicates that during the hours before the shooting, defendant was extremely angry with the victim because the victim and defendant's girlfriend had not returned to the home, leaving defendant to care for the children, and because defendant believed that his girlfriend of nineteen years was having sex with the victim.

In light of the considerable evidence indicating that the altercation was not as serious as defendant argues, as well as the evidence regarding how the victim was shot, the prosecutor established that defendant was not acting in self-defense. Therefore, the admission of the evidence that defendant successfully asserted self-defense to an earlier shooting could not be considered outcome determinative. Accordingly, any error was harmless and reversal is not warranted.

Defendant next argues that he was denied a fair trial when the trial court excluded evidence regarding prior violent acts committed by the victim. We disagree. This Court reviews the trial court's decision to admit or exclude evidence for an abuse of discretion. *People v Howard*, 226 Mich App 528, 551; 575 NW2d 16 (1997).

Defendant sought to introduce the testimony of a female witness who had been an acquaintance of the victim for fifteen years, living with him for about one year. The proffered evidence concerned violent acts committed against the witness by the victim. The trial court did not allow the witness to testify regarding specific acts of conduct, but only to the victim's reputation for violence in the community.

We find it unnecessary to determine if the trial court erred in disallowing evidence regarding specific instances of violent conduct pertaining to the witness, because the admission of the evidence does not warrant a new trial, in that, any resulting error was harmless. MCL 769.26; *Lukity, supra* at 495. An abundant amount of evidence, including specific instances of violent conduct, was introduced indicating that the victim was violent. Most significant in deeming this a harmless error is the fact that defendant himself testified to one of the instances where the victim assaulted the witness at issue. Defendant testified that he saw the victim knock the female witness out of a chair and hit her about three times. Defendant testified that the victim struck the witness in the head and face, knocking out one of her teeth.

Defendant argues, in his brief on appeal, that the error on the part of the trial court cannot be considered harmless because it is the only evidence which links the victim to a firearm. However, this is not so. Defendant himself testified that he had previously seen the victim carrying a semi-automatic gun.

Considering the significant amount of testimony that the victim was violent, as well as the fact that defendant himself was permitted to testify about one of the victim's specific violent acts, any error that may have resulted from the trial court's exclusion was, at worst, harmless.

Defendant next argues that he was denied a fair trial when the prosecutor engaged in several instances of misconduct. We disagree. Some of the errors claimed by defendant regarding prosecutorial misconduct were preserved, while others were not. For appellate review of allegedly improper conduct by the prosecutor, this Court reviews claims case by case, examining the remarks in context, to determine if the defendant received a fair and impartial trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995). In instances of alleged prosecutorial misconduct that are unpreserved at trial, this Court reviews for plain error. *People v Aldrich*, 246 Mich App 101, 110; 631 NW2d 67 (2001).

Defendant argues that the prosecutor referenced facts not in evidence regarding the firing of the weapon in the basement of the home prior to the shooting and regarding the 1994 shooting. Although a prosecutor may not make a statement of fact to the jury which is unsupported by the evidence, a prosecutor is free to argue the evidence and all reasonable inferences arising from it as they relate to his theory of the case. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000). Here, a review of the record indicates that the prosecutor's remarks were either directly supported by the trial testimony, or were reasonable inferences arising out of the testimony. There was no error, plain or otherwise.

Defendant also argues that the prosecutor improperly elicited unfairly prejudicial testimony from witnesses. A review of the record indicates that the instances of allegedly improper questioning had a relevant purpose other than to inflame the jury. *Bahoda, supra* at 263. Moreover, defendant fails to show how any of the instances prevented him from receiving a fair trial. There was no error, plain or otherwise, which warrants reversal.

Defendant finally argues that his life sentence is disproportionate and amounts to cruel and unusual punishment. We disagree. Our Supreme Court's sentencing guidelines apply to offenses committed before January 1, 1999, while the statutory guidelines apply to offenses committed on or after January 1, 1999. MCL 769.34(2); *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 316 (2000). Because the crime here was committed on February 14, 1999, the statutory guidelines apply.

Defendant's sentence was within the statutory guidelines, and he does not assert an error in scoring the guidelines, nor does defendant assert an error concerning the information relied upon in determining his sentence. Therefore, as to defendant's proportionality argument, we are mandated to affirm the sentence pursuant to MCL 769.34(10). *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000). As to defendant's constitutional argument regarding cruel and unusual punishment, we find that, considering the gravity and circumstances of the offense, as well as the fact that the sentence was within the guidelines, the life sentence for second-degree murder does not constitute cruel and unusual punishment. See *People v Lewis*, 168 Mich App 255, 270-272; 423 NW2d 637 (1988).

Affirmed.

/s/ William B. Murphy

/s/ Janet T. Neff

/s/ Joel P. Hoekstra