

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DERRICK CLAYTON,

Defendant-Appellant.

UNPUBLISHED

December 18, 2007

No. 273056

Wayne Circuit Court

LC No. 06-006411-01

Before: Jansen, P.J., and O’Connell and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for voluntary manslaughter, MCL 750.321. Defendant was sentenced to 12 to 45 years’ imprisonment. We affirm.

Defendant first argues that the evidence adduced at trial was insufficient to prove that he intended to kill the victim and did not act in self-defense. “[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). In applying this deferential standard, “a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Contrary to defendant’s argument, voluntary manslaughter does not require the specific intent to kill, only “an intent to create a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result.” *People v Mendoza*, 468 Mich 527, 540; 664 NW2d 685 (2003). In this case, the evidence clearly indicates, and defendant conceded, that he intentionally stabbed the victim in the chest with a knife, so the prosecutor presented sufficient evidence to substantiate defendant’s conviction for voluntary manslaughter.

Defendant also argues that there was insufficient evidence to prove that he did not act in self-defense. “[T]he killing of another person in self-defense by one who is free from fault is justifiable homicide if, under all the circumstances, he honestly and reasonably believes that he is in imminent danger of death or great bodily harm and that it is necessary for him to exercise deadly force.” *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002). Self-defense

“requires that the actor try to avoid the use of deadly force if he can safely and reasonably do so, for example by applying nondeadly force or by utilizing an obvious and safe avenue of retreat.” *Id.* “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, there was sufficient evidence from which a jury could conclude that defendant did not act in self-defense and was not justified in using deadly force. Viewing the evidence in the light most favorable to the prosecution, it does not appear that defendant honestly and reasonably believed his life was in imminent danger, or that he was in imminent danger of great bodily harm, or that such a belief might have been reasonable under the circumstances. Although the victim may have tried to instigate a fistfight, defendant escalated the amount of force used in the fight, even though it was apparent that the victim was unarmed, and defendant and the victim were nearly identical in size. Therefore, defendant’s use of a knife to defend himself against the unarmed, and comparably sized victim, was unnecessary. See *id.* Moreover, the fight took place on a public sidewalk, giving defendant ample opportunity to safely retreat. See *Riddle, supra*. Under the circumstances, defendant’s use of deadly force was unjustified, and the jury properly concluded that the prosecutor proved, beyond a reasonable doubt, that defendant did not act in self-defense.

Defendant next argues that his sentence is disproportionate to the crime he committed, so it constitutes cruel and unusual punishment in violation of US Const, Am VIII; Const 1963, art 1, § 16. Defendant did not object to his sentence, so we review his unpreserved claim for plain error. *People v McLaughlin*, 258 Mich App 635, 670; 672 NW2d 860 (2003). Defendant was sentenced as a fourth habitual offender to 12 to 45 years’ imprisonment. His guidelines range was 50 to 200 months’ imprisonment, so the trial court’s sentence of a minimum 144 months’ imprisonment was well within the range of the sentencing guidelines and presumptively proportionate. See *People v Babcock*, 469 Mich 247, 263-264; 666 NW2d 231 (2003).

Because defendant was a fourth habitual offender, and voluntary manslaughter carries a maximum penalty of more than five years, the trial court was authorized to sentence defendant to life imprisonment. MCL 769.12(1)(a); MCL 750.321. The trial court instead sentenced defendant to a maximum of forty-five years, even though defendant has an extensive criminal history. Defendant has a juvenile drug conviction, four adult drug convictions, and convictions for felonious assault and felony-firearm. Defendant was also on probation when he committed the instant offense. Regarding the facts underlying the instant offense, defendant intentionally stabbed an unarmed man in the chest during a street-side brawl that was essentially about whether the man was a narcotics informant for police. Under the circumstances, defendant fails to persuade us that his relatively modest prison term is excessive in light of his lengthy criminal record and the gravity of his current offense. See *Babcock, supra*.

Defendant filed a Standard 4 brief, which relies primarily on the argument that his arrest warrant and complaint were fatally flawed, resulting in his unconstitutional apprehension and prosecution. However, contrary to defendant’s claims, the magistrate was provided ample information to support the acceptance of the complaint and the issuance of the warrant. The complaint exists (it is in the lower court record) and was duly sworn to by the complaining witness. Both it and the felony information were authorized by the prosecutor. Finally, defendant stipulated to some of the testimony he now claims should have been presented at the preliminary examination. In the end, defendant fails to demonstrate any procedural or structural

defect in his case, so we reject his unsupported claims. It follows that defendant's related claims of ineffective assistance of counsel also fail.

Affirmed.

/s/ Kathleen Jansen

/s/ Peter D. O'Connell

/s/ Karen M. Fort Hood