STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN WILLIAM CALHOUN,

Defendant-Appellant.

UNPUBLISHED
May 30, 1997

No. 195493
Recorder's Court
LC No. 94-013945

Before: Smolenski, P.J., and Kelly and Gribbs, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of voluntary 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). Defendant was sentenced to serve two to fifteen years' imprisonment for his manslaughter conviction, to be served consecutively to two years' imprisonment for his felony-firearm conviction. Defendant now appeals as of right, and we affirm.

Defendant first contends that the evidence was insufficient to support a finding beyond a reasonable doubt that he did not act in self-defense when he shot and killed the victim. We disagree. When considering a sufficiency of the evidence challenge, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 525; 489 NW2d 748 (1992), modified 441 Mich 1201 (1992).

In Michigan, once a defendant introduces evidence of self-defense, the prosecutor bears the burden of disproving it beyond a reasonable doubt. *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993). The killing of another 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 Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993). However, a defendant is not entitled to use any more force than is necessary to defend himself. *Id*.

Here, the testimonial evidence reveals that defendant's belief of imminent danger was neither honest nor reasonable and that his use of force was excessive in light of the circumstances. Defendant

claims that the victim ordered his two vicious, 120-pound dogs to attack defendant. Defendant was terrified, so he aimed his gun above the dogs' heads and fired. Defendant even hurled a bottle at the dogs to repel their advances. However, the testimonial evidence reveals that each of the dogs weighed less than sixty pounds, that the dogs were mild-tempered, and that the victim held the dogs, which were on a leash, at abeyance approximately two to three feet from defendant. The evidence also reveals that the victim was not in possession of a weapon. Moreover, the pattern of gunshot wounds to the victim's body – one to his chest and a second to his back – indicates that defendant continued his onslaught even after the victim attempted to retreat. Thus, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find that the prosecution disproved defendant's claim of self-defense beyond a reasonable doubt.

Defendant also argues that his felony-firearm conviction should be vacated because his employment as a security guard excepted him from punishment under the statute. We disagree. Statutory interpretation is a question of law which we review de novo. *People v Bobek*, 217 Mich App 524, 528; 553 NW2d 18 (1996); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995).

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *People v Stanaway*, 446 Mich 643, 658; 521 NW2d 557 (1995). The first criterion in determining intent is the specific language of the statute. *People v Pitts*, 216 Mich 229, 232; 548 NW2d 688 (1996). If the plain and ordinary meaning of the language is clear, judicial construction is normally neither necessary nor permitted. *People v Nantelle*, 215 Mich App 77, 80; 544 NW2d 667 (1996). The felony-firearm statute, MCL 750.227b; 28.424(2), provides in pertinent part:

> (1) A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony, except a violation of section 223, section 227, 227a or 230, is guilty of a felony, and shall be imprisoned for 2 years.
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> (4) This section does not apply to a law enforcement officer who is authorized to carry a firearm while in the official performance of his or her duties, and who is in the performance of those duties. *As used in this subsection, "law enforcement officer" means a person who is regularly employed as a member of a duly authorized police agency or other organization of the United States, this state, or a city, county, township, or village of this state, and who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of this state.* [Footnotes omitted; emphasis added.]

Based upon the plain language of the statute, we can only conclude that the Legislature intended that the felony-firearm statute except from punishment those members of a publicly-owned police or crime detection agency. Here, defendant was employed as a security guard by the David McKissick

Security Company when he shot and killed the victim. As a privately

employed security guard, defendant is subject to punishment under the statute and, therefore, we affirm his felony-firearm conviction.

Affirmed.

/s/ Michael R. Smolenski
/s/ Michael J. Kelly
/s/ Roman S. Gribbs