STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD LEWIS,

Defendant-Appellant.

UNPUBLISHED
August 8, 1997

No. 189618
Recorder's Court
LC No. 94-011561

Before: Taylor, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of second-degree murder, MCL 750.317; MSA 28.549. We affirm.

I

Defendant first contends that the jury should have given an "imperfect self-defense" instruction. We disagree.

In Michigan, the doctrine of imperfect self-defense applies only where the defendant would have had a right to self-defense but for his or her actions as the initial aggressor. *People v Amos,* 163 Mich App 50, 57; 414 NW2d 147 (1987). Imperfect self-defense is a qualified defense which can mitigate an act of second-degree murder to voluntary manslaughter because it serves to negate the element of malice *Amos, supra; People v Kemp,* 202 Mich App 318, 323; 508 NW2d 184 (1993).

In determining whether an initial aggressor is entitled to a claim of imperfect self-defense, the focus is on "the intent with which the accused brought on the quarrel or difficulty." *Kemp,* 202 Mich App at 324. A defendant is not entitled to invoke the doctrine of imperfect self-defense if the circumstances surrounding the incident indicate that he initiated the confrontation between himself and the victim with the intent to kill or do great bodily harm. *Id.* Furthermore, under Michigan law, a defendant is not entitled to claim imperfect self-defense if he acted with excessive force. *Id.,* at 325.

Here, the jury was instructed on *self-defense* because, according to defendant's testimony, Jacque (the victim) was the initial aggressor, and defendant attacked Jacque in self-defense. If Jacque was the initial aggressor, then the *imperfect self-defense* theory is inappropriate. However, had defendant been the initial aggressor, the evidence here showed that defendant acted with excessive force. He continued to stab Jacque while they were fighting in the street, and after Jacque broke free and ran away, defendant followed after him with the knife. Defendant repeatedly stabbed Jacque on the porch, stopping only when threatened at gunpoint by a witness. Jacque sustained sixteen stab wounds, while defendant was stabbed once in the hand. Clearly, there was no error in refusing to give an imperfect self-defense instruction.

II

Defendant next challenges the sufficiency of the evidence, contending that the prosecution failed to negate his claim of self-defense. We disagree.

In Michigan, 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. *Kemp,* 202 Mich App at 322. A defendant is not entitled to use any more force than is necessary to defend himself. *Id.*

We have previously noted that multiple stab wounds to a victim are more consistent with murder than self-defense, and that multiple stab wounds may indicate that the defendant had the intent to do great bodily harm or acted in a manner that created a high risk of death or great bodily harm with the knowledge that such was a probable result. *People v Rushlow,* 179 Mich App 172, 179; 445 NW2d 222 (1989), aff'd 437 Mich 149 ( ). Here, the excessive stabbing showed defendant's intent to inflict great bodily harm or the intent to create a very high risk of death with the knowledge that the act would probably cause death or great bodily harm. Although it is possible that defendant honestly and reasonably believed that his life was in imminent danger or that there was a threat of serious bodily harm when Jacque stabbed defendant in the hand, viewing the evidence in the light most favorable to the prosecution, we conclude that defendant used excessive force to defend himself. A rational trier of fact could conclude that sufficient evidence had been presented to support all of the elements of second-degree murder beyond a reasonable doubt.

III

Defendant also argues that he was deprived of a fair trial because the trial court permitted the prosecutor to reopen his proofs. Generally, the reopening of proofs for either the prosecution or defense rests within the sound discretion of the trial judge. *People v Collier,* 168 Mich App 687, 694-695; 425 NW2d 118 (1988). There was no abuse of discretion here.

Prior to defendant's testimony, defendant brought a motion in limine to exclude the admission of his prior convictions for attempted robbery and larceny from a vehicle. The trial court excluded the robbery conviction, but ruled that the prosecutor could ask defendant about his prior larceny conviction. After the defense rested, the prosecutor told the trial court that he had forgotten to ask defendant about

the larceny conviction and requested permission to reopen the proofs so that this one question could be asked. The trial court allowed the prosecutor to reopen the proofs and pose this question to defendant. No undue advantage was afforded the prosecutor by this question and it was no surprise to defendant that this question was asked in light of the extensive discussion that occurred prior to defendant's decision to testify. *Collier,* 168 Mich App at 694-695.

IV

Lastly, defendant argues that the trial court erred in scoring Offense Variables (OV) 3 and 4. Pursuant *People v Mitchell*, 454 Mich 145, 175-177; 560 NW2d 600 (1997), appellate review is unavailable for claims of error based on alleged misinterpretation of the guidelines, instructions regarding how the guidelines should be applied, or misapplication of guidelines variables. Because defendant's claims of error involve an alleged misinterpretation of the guidelines and/or instructions regarding how the guidelines should be applied, we do not address this issue.

Affirmed.

/s/ Clifford W. Taylor
/s/ Richard Allen Griffin
/s/ Henry William Saad