

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TARA TRICHELLE PARKER,

Defendant-Appellant.

UNPUBLISHED
December 23, 1997

No. 196321
Recorder's Court
LC No. 95-006987

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

MEMORANDUM.

Defendant appeals as of right from her jury conviction of voluntary manslaughter, 750.321; MSA 28.553, which is a cognate lesser offense of the original charge of first-degree murder. Defendant presents two issues for review. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the trial court erred in instructing the jury that, if the jury determined that defendant were in her own dwelling, she had no duty to retreat with respect to the issue of self-defense, but that if she were outside her own dwelling, she did have a duty to retreat if she could do so without risk. If there was error in these instructions, it was an error which favored defendant, since the evidence, even viewed in a light most favorable to defendant, fails to establish that defendant was in a place, when the fatal confrontation occurred, where she had a right to stand her ground. At best, defendant was in a common area of an apartment building in which she was the lessee of an apartment; such common areas are outside the scope of the areas to which the no-retreat rule applies. *People v Alphus Harris*, 56 Mich App 517, 529-530; 224 NW2d 680 (1974).

Defendant also contends that the trial court erred in exceeding the sentencing guidelines based on its perception that the crime involved elements of premeditation. Defendant argues that the jury's decision to convict him of voluntary manslaughter, rather than murder, precluded the trial court from considering any evidence of premeditation when sentencing defendant. We disagree. The trial court, which saw and heard the evidence at trial, was within its discretion in relying on proof by a

* Circuit judge, sitting on the Court of Appeals by assignment.

preponderance of the evidence for sentencing purposes, even if such evidence was inadequate to satisfy the jury beyond a reasonable doubt. The reasons given for exceeding the sentence guidelines were the result of permissible inferences from the evidence introduced at trial and did not result in a disproportionate sentence. *People v Shavers*, 448 Mich 389; 531 NW2d 165 (1995).

Affirmed.

/s/ Gary R. McDonald

/s/ Myron H. Wahls

/s/ John R. Weber