

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRANCE DEANGELA MARSH,

Defendant-Appellant.

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UNPUBLISHED

October 28, 2004

No. 248610

Wayne Circuit Court

LC No. 02-014218-01

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Defendant Terrance Marsh appeals as of right his convictions of voluntary manslaughter, MCL 750.321, and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a bench trial. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Marsh was charged with second-degree murder, MCL 750.317, and felony-firearm in the shooting death of Eddie Johnson. Marsh and several other persons were gathered at Johnson's home when, according to witness Cedric Boswell, Johnson and Marsh's mother began arguing about money. Marsh intervened, and became involved in a physical confrontation with Johnson. The fight moved to the bathroom, where Marsh pushed Johnson into the bathtub. Boswell testified that he attempted to stop the fight, but that Johnson removed a gun from his waistband and fired two shots at Marsh, one of which struck Marsh. As Boswell left the home, he heard two or three more shots. When Boswell returned to Johnson's home he found that Johnson was still in the bathtub and that he had been shot. The medical examiner found that Johnson was shot twice in the head and once in the knee from a range of approximately two feet, and the shots to the head were immediately fatal.

At trial, Sergeant Abdella testified that Marsh waived his *Miranda*<sup>1</sup> rights and made a statement. Marsh stated that he fought with Johnson, and that he took the gun and shot Johnson in the head and chest so that Johnson could not do him further harm. Marsh testified that after he

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<sup>1</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

took the gun, Johnson did not continue fighting. Marsh testified that he intervened in the altercation between his mother and Johnson in order to protect his mother. Marsh stated that he shot Johnson because he did not want Johnson to retrieve the gun and either shoot him again or shoot his mother.

The trial court acquitted Marsh of second-degree murder, but convicted him of voluntary manslaughter and felony-firearm, finding that he shot Johnson under extreme provocation and in the heat of passion. The trial court rejected Marsh's claim of self-defense, finding that he could have left the scene after he retrieved the gun.

## II. Sufficiency Of The Evidence

### A. Standard Of Review

We review de novo challenges to the sufficiency of the evidence, taking the evidence in the light most favorable to the prosecutor and determining whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.<sup>2</sup>

### B. Marsh's Self-Defense Claim

Marsh argues that the prosecutor failed to establish, beyond a reasonable doubt, that Marsh did not act in self-defense when he shot Johnson. To establish lawful self-defense, the evidence must show that: (1) the defendant honestly believed he was in danger; (2) the danger feared was death or serious bodily harm; (3) the action taken appeared at the time to be immediately necessary; and (4) the defendant was not the initial aggressor.<sup>3</sup> The threatened harm must be imminent,<sup>4</sup> and the defendant's honest belief in danger must be reasonable.<sup>5</sup> The reasonableness of a defendant's belief in danger must be measured by the circumstances as they appeared to the defendant rather than as they actually existed.<sup>6</sup> Generally, a defendant must retreat if retreat is safely possible.<sup>7</sup> Once a defendant introduces evidence of self-defense, the prosecutor bears the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense.<sup>8</sup>

Marsh admitted that after Johnson fell into the bathtub he took the gun from Johnson, then stood over Johnson and shot him. Marsh asserted that he did not leave after he retrieved the gun because he wanted to make certain that Johnson could do him no further harm. The trial

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<sup>2</sup> *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

<sup>3</sup> *People v George*, 213 Mich App 632, 634-635; 540 NW2d 487 (1995).

<sup>4</sup> *People v Riddle*, 467 Mich 116, 129 n 21; 649 NW2d 30 (2002).

<sup>5</sup> *People v Heflin*, 434 Mich 482, 502-503; 456 NW2d 10 (1990).

<sup>6</sup> *People v Green*, 113 Mich App 699, 704; 318 NW2d 547 (1982).

<sup>7</sup> *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000).

<sup>8</sup> CJI2d 7.20; *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

court was entitled to reject Marsh's contention that he continued to fear Johnson even after he retrieved the gun,<sup>9</sup> and to conclude that, in light of the evidence that Johnson was lying in a position that made it virtually impossible for him to move quickly, Marsh could have left the bathroom after he retrieved the gun.<sup>10</sup> The trial court did not clearly err in finding that the prosecution proved beyond a reasonable doubt that Marsh did not act in self-defense.<sup>11</sup> We conclude that the evidence, viewed in a light most favorable to the prosecution, supported Marsh's convictions.<sup>12</sup>

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Richard A. Bandstra

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<sup>9</sup> See *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989).

<sup>10</sup> See *Heflin*, *supra*; *Canales*, *supra*.

<sup>11</sup> CJI2d 7.20; *Fortson*, *supra*.

<sup>12</sup> See *Petrella*, *supra*.