

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTONIO CINQUE COCHRAN,

Defendant-Appellant.

UNPUBLISHED

May 9, 2006

No. 260550

Wayne Circuit Court

LC No. 04-009630-01

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant was convicted after a bench trial of voluntary manslaughter, MCL 750.321, and was sentenced to 62 to 180 months' imprisonment. He appeals as of right. We affirm.

Defendant's conviction arises from an incident in 2004 in which he strangled George Harris to death during an argument. According to Cheryl Cochran, who is defendant's mother and was Harris' girlfriend, on the day of the homicide, Harris made sexual demands of Cochran. When Cochran loudly refused Harris's demands, defendant entered the bedroom they occupied. While Harris was lying in bed, defendant broke a lamp. Harris then got out of bed. Cochran left the house to call the police. Cochran testified that at the time she left the room, Harris had defendant down on the floor and that they continued to fight. Additionally, Cochran testified that a few days earlier Harris and defendant had a confrontation during which Harris shot at defendant.

In defendant's statement to the police, he asserted that he heard his mother asking Harris why he punched her in the head. Defendant then confronted Harris. They began arguing and Harris pulled out a gun. Defendant and Harris wrestled for control over the gun. Defendant knocked the gun out of Harris's hand and then both of them had their hands around each other's necks. They started choking one another and eventually Harris's hands came off defendant's neck. At that point, defendant released his grip of Harris's neck. Harris slumped over on the bed and defendant began choking and gasping for air. Defendant then left the room.

Four police officers searched Cochran's home and did not find any weapons. When defendant turned himself into the police two days after the incident, he did not bring a gun, nor did he have any marks on his neck.

The prosecution impeached Cochran multiple times on issues essential to the defense of self-defense. For example, prior to her testimony in court, Cochran had never mentioned that Harris had shot at defendant or that Harris was forcing her to have sex on the day of the incident. Further, Cochran testified at trial that defendant “walked” into the bedroom; however, she had told the police that defendant “busted” into the bedroom. At trial, Cochran stated that defendant did not say anything in response to her request for him to leave the bedroom, but she had previously told the police that defendant said “no” to her request. Finally, Cochran testified at trial that Harris had defendant down on the ground when she left to call 911; she neglected to tell that to the police or state it in her investigatory subpoena.

The trial court found that the record did not support defendant’s claim of self-defense and found him guilty of voluntary manslaughter.

Defendant argues on appeal that the trial court erred in finding him guilty of voluntary manslaughter because the prosecution failed to present sufficient evidence to sustain his conviction. Specifically, defendant contends that the prosecution failed to refute his claim of self-defense.

No special action is needed to preserve for appeal a challenge to the sufficiency of the evidence. *People v Patterson*, 428 Mich 502, 514; 410 NW2d 733 (1987).

In reviewing the sufficiency of the evidence presented in a bench trial, this Court views the evidence de novo to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). Under de novo review, this Court gives no deference to the trial court. *People v Howard*, 233 Mich App 52, 54; 595 NW2d 497 (1998).

Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of a crime. *Wilkens, supra*. It is for the trier of fact to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All evidentiary conflicts must be resolved in favor of the prosecution. *Wilkens, supra*.

“[T]he 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 Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990). “A claim of self-defense first requires proof that the defendant has acted in response to an assault.” *People v Elkhoja*, 251 Mich App 417, 443; 651 NW2d 408 (2002), vac’d in part on other grds 467 Mich 916 (2003). Once the defendant presents evidence of self-defense, the burden shifts to the prosecution to disprove it beyond a reasonable doubt. *People v James*, 267 Mich App 675, 677; 705 NW2d 724 (2005).

If the trial court believed the prosecution’s version of events on which Cochran was impeached, it could have concluded that defendant “busted” into the bedroom and refused Cochran’s request to leave the room because he intended to assault Harris. Moreover, it could have concluded that defendant assaulted Harris first after Cochran testified that defendant entered the bedroom and then proceeded to break a lamp while Harris was lying down.

Based on Cochran's impeached testimony, the trial court could have concluded that Harris had not previously shot at defendant. In addition, if the trial court believed the prosecution's version of events on which Cochran was impeached, it could have concluded that Cochran did not witness Harris holding defendant down on the ground.

Based on the testimony of the officers at trial, the trial court could have concluded that there was a thorough search for weapons, and because no gun was found, Harris did not have a gun at the time of the fight.

Based on the testimony of Officer Miller, who interviewed defendant after he turned himself in, defendant did not have any marks on his neck two days after the murder. Therefore, the trial court could have concluded that defendant strangled Harris, but Harris did not simultaneously strangle defendant.

The prosecution introduced evidence which contradicted defendant's claim of self-defense, including evidence that defendant did not act in response to an assault. Because this Court must resolve all evidentiary conflicts in favor of the prosecution, a trial court could determine there was sufficient evidence to permit a rational trier of fact to find that defendant did not have an honest and reasonable belief that he was in imminent danger or that the victim posed a threat of serious bodily harm, therefore, negating defendant's claim of self-defense beyond a reasonable doubt. *Wilkins, supra*.

Affirmed.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot