

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
May 10, 2012

v

FREDERICK LEE THOMAS,

Defendant-Appellant.

No. 304020
Kalamazoo Circuit Court
LC No. 2010-001845-FH

Before: WHITBECK, P.J., AND SAWYER AND HOEKSTRA, JJ.

PER CURIAM.

Defendant Frederick Thomas appeals as of right his bench trial conviction of involuntary manslaughter.¹ The trial court sentenced Thomas, as a fourth offense habitual offender,² to serve 54 to 240 months in prison with credit for 169 days. We affirm.

I. FACTS

On October 9, 2010, Thomas was socializing with his friends, Richard Lewis and Sonya Richards, at Richards' home. Richards' friend, Clifford Jones, was also there. At some point, Thomas and Lewis got in a loud verbal argument. Witnesses testified that Thomas was angry and in a rage, but Thomas testified that he was not angry. Lewis walked away, and Jones approached Thomas, trying to calm him. Thomas testified that Jones grabbed him twice and started to take a swing at him when Thomas punched Jones in the face. Witnesses testified, however, that Richards got between Thomas and Jones, Thomas pushed Richards out of the way, and then Thomas punched Jones. There was testimony that Jones was not aggressive or assaultive before this assault. After Thomas punched him, Jones fell backwards, hit his head on the concrete driveway, and died as a result of his injuries. Jones's blood alcohol level was 0.26 grams per 100 milliliters. Witnesses testified that Jones did not have trouble walking, moving, or standing before being hit.

¹ MCL 750.321.

² MCL 769.12.

Before trial, Thomas moved to waive his right to a jury trial. At a hearing on the motion, he stated that he understood the charge and possible penalty. Defense counsel represented to the trial court that she had gone through the jury waiver form with Thomas, that they had discussed jury waiver on a few occasions and what option would be best, and that Thomas decided it was best to proceed without a jury. Upon the trial court's questions, Thomas confirmed on the record that he understood that he had a right to trial by jury; that he had an opportunity to discuss the decision with defense counsel; that no one had made any promises or threats to him; that his decision was voluntary; and that he understood that once the waiver was accepted, the trial court would determine the facts of the case and the law to apply. Thomas, defense counsel, the prosecutor, and the trial court all signed a waiver.

Following a bench trial, the trial court found Thomas guilty of involuntary manslaughter. As to cause, the trial court noted:

The parties did not necessarily stipulate, but it went without challenge that the Defendant, in this matter did strike Mr. Jones. That that striking of Mr. Jones caused him to fall against the pavement and that fall—falling resulted in a blunt force trauma to Mr. Jones' head, thereby causing death.

The trial court acknowledged that Thomas asserted a theory of self-defense and that there had been different versions of the incident presented. The trial court noted that the matter turned on a determination regarding which testimony to accept and which testimony best fit the undisputed facts and physical evidence. The trial court determined that the several witnesses' testimony fit better with the physical evidence than Thomas's version and that Thomas's version was at odds with the physical evidence. The trial court reasoned:

Although it was not specifically addressed in terms of argument, the Court, in looking at the exhibits would note that the injury to Mr. Jones appeared, based upon him falling backwards onto the concrete pavement. This would appear to be consistent with Mr. Jones being struck frontally in the face and in essence, falling back based upon that force.

It is more difficult, in the Court's estimation to postulate that kind of a trajectory for Mr. Jones' body if he were, in fact, acting as an aggressor coming forward towards the Defendant, either lunging at him and swinging and missing than being hit with, a co-called [sic] counter punch. Normally the reaction of the individual punched would either be forward or sideways fall relating to the action of this assailant.

Additionally, it would appear that the Defendant's rendition of the relative size differential between the victim and the Defendant would make it extremely difficult to imagine how a Defendant would accomplish such a punch on someone who was, in fact, acting in an aggressive manner towards the Defendant. I am not saying that it would not—could not actually happen; however, given the [witnesses'] testimony . . . , it would appear that the trajectory of Mr. Jones' body would more likely be as stated by them of falling back based upon him not having any indication that he was going to be punched at the time he was punched.

The trial court made note that Thomas’s testimony did not fit the timeframe and that the trial court found Thomas’s testimony inconsistent. Thomas now appeals his conviction.

II. JURY WAIVER

A. STANDARD OF REVIEW

Thomas argues that his jury waiver was invalid because defense counsel made improper assertions at the hearing and that no one explained to him that in a jury trial he would select the jurors, that a jury verdict has to be unanimous, or the difference between a jury and a judge. Thomas did not preserve this issue by raising it in the trial court.³ Therefore, we review this unpreserved alleged constitutional error for plain error affecting substantial rights.⁴

B. LEGAL STANDARDS

There is a constitutionally guaranteed right for a criminal defendant’s guilt to be determined beyond a reasonable doubt by a jury.⁵ However, MCL 763.3 and MCR 6.402 allow a criminal defendant to waive his right to a jury trial. A valid jury waiver must be “knowingly and voluntarily made.”⁶ MCL 763.3 provides that a defendant may waive his right to a jury trial when the trial court approves, the prosecutor agrees, the waiver is in writing, and the waiver is made in open court after the defendant has been arraigned and has had an opportunity to consult with counsel. MCR 6.402(B) provides:

Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

“[A]n attorney cannot waive the right to a jury trial ‘without the fully informed and publicly acknowledged consent of the client[.]’”⁷

The trial court is not required to explain to a defendant “that a jury must reach a unanimous verdict in order to convict him, while in a bench trial his fate would be decided by a

³ *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994).

⁴ *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

⁵ *People v Cook*, 285 Mich App 420, 422; 776 NW2d 164 (2009) (citations omitted).

⁶ *Id.* (citations omitted).

⁷ *Id.* at 423, quoting *Taylor v Illinois*, 484 US 400, 418 n 24; 108 S Ct 646; 98 L Ed 2d 798 (1988).

single person.”⁸ Similarly, the trial court is not required to advise the defendant of the meaning of the right to a jury trial.⁹

When a trial court complies with the requirements of MCR 6.402(B) it “creates a presumption that a defendant’s waiver was voluntary, knowing, and intelligent.”¹⁰

C. ANALYSIS

The trial court complied with the requirement of MCR 6.402(B), creating a presumption that the waiver was valid. The trial court also complied with MCL 763.3. And despite Thomas’s assertions, the trial court was not required to inform him of the meaning of a jury trial. Therefore, we conclude that Thomas has not established plain error affecting his substantial rights.

III. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

Thomas argues that there was insufficient evidence to support his conviction because he asserted a theory of self-defense and because Jones’s blood alcohol level was 0.26 grams per 100 milliliters. We review de novo claims of insufficient evidence.¹¹ “When reviewing a claim of insufficient evidence following a bench trial, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found the essential elements of the crime were proven beyond a reasonable doubt.”¹²

B. LEGAL STANDARDS

“[I]f an assault and battery is committed with a specific intent to inflict injury and causes unintended death, the actor may be found guilty of (at least) involuntary manslaughter.”¹³ In the instant case, it is undisputed that Thomas hit Jones, Jones fell, and Jones died. However, Thomas asserted that he acted in self-defense.

“[T]he killing of another person in self-defense by one who is free from fault is justifiable homicide if, under all the circumstances, he honestly and reasonably believes that he is in imminent danger of death or great bodily harm and that it is necessary for him to exercise deadly

⁸ *People v James (After Remand)*, 192 Mich App 568, 570-571; 481 NW2d 715 (1992).

⁹ *People v Leonard*, 224 Mich App 569, 595-596; 569 NW2d 663 (1997).

¹⁰ *People v Mosly*, 259 Mich App 90, 96; 672 NW2d 897 (2003) (citation omitted).

¹¹ *People v Harverson*, 291 Mich App 171, 177; 804 NW2d 757 (2010).

¹² *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995) (citation omitted).

¹³ *People v Datema*, 448 Mich 585, 608; 533 NW2d 272 (1995).

force.”¹⁴ “Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt.”¹⁵ “An actor’s intent may be inferred from all of the facts and circumstances, . . . and because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient.”¹⁶

C. ANALYSIS

Thomas asserted that he acted in self-defense because, as he testified, Jones grabbed him and was taking a swing at him. However, the prosecution introduced witness testimony that Thomas was angry and in a rage, while Jones was calm and in a good mood. The witnesses further testified that Thomas pushed Richards out of the way when she moved between the two men and then Thomas immediately punched Jones. According to the witnesses, Jones was not being verbally or physically assaultive toward Thomas; rather Jones was attempting to calm Thomas. Thus, taking the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could find beyond a reasonable doubt that Thomas did not act in self-defense and that the prosecution proved all the elements of the crime beyond a reasonable doubt.

Thomas also argues that Jones’s blood alcohol level may have played a role in Jones’s inability to balance after being hit and should have been considered in determining Thomas’s guilt. However, there was undisputed testimony that Jones did not have any difficulty walking, standing, or moving before being hit. There was no testimony or evidence that Jones’s blood alcohol level had any influence on the events that evening. Indeed, the doctor who performed the autopsy testified that Jones’s head injury, not the alcohol level, caused his death. Further, “[a] defendant takes his victim as he finds him and cannot expect to be exonerated himself from criminal liability merely by arguing that the defendant’s negligence was an intervening cause.”¹⁷ Given this evidence, a rational trier of fact could determine that Thomas caused Jones’s injury and death and, thus, that the prosecution proved all the elements of involuntary manslaughter beyond a reasonable doubt.

We affirm.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ Joel P. Hoekstra

¹⁴ *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002).

¹⁵ *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993) (citation omitted).

¹⁶ *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998) (citations omitted).

¹⁷ *People v Clark*, 171 Mich App 656, 659; 431 NW2d 88 (1988).