

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

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
July 17, 2012

v

RODNEY BURT,

Defendant-Appellant.

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No. 304787  
Wayne Circuit Court  
LC No. 11-000063-FH

Before: MURRAY, P.J., and FORT HOOD and BORRELLO, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of manslaughter, MCL 750.321. He was sentenced to 5 to 15 years' imprisonment. Defendant appeals by right, and we affirm.

Defendant's conviction arises from his altercation with the victim, defendant's brother. Defendant testified that the two men argued. The victim reportedly threatened defendant and struck defendant first in the neck. Defendant testified that he slapped the victim in response, and the victim fell to the ground. The victim suffered a serious head injury and later died. However, an eyewitness to the incident testified that the victim never struck defendant. Rather, the eyewitness testified that defendant appeared to drop his shoulder and strike the victim with his fist. The contact made a loud sound, and the victim fell to the ground. Defendant began to shake the victim when the eyewitness called out to him, causing defendant to run away. The eyewitness dialed 911 and waited with the victim until police arrived. At the hospital and thereafter, defendant gave four different accounts of what happened that night. The trial court convicted defendant as charged, holding that the eyewitness was credible, and defendant was not.

On appeal, defendant challenges the sufficiency of the evidence to support the conviction in light of the claim of self-defense. A challenge to the sufficiency of the evidence is reviewed de novo. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). When reviewing a claim of insufficient evidence, this Court reviews the record in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *In re Contempt of Henry*, 282 Mich App 656, 677; 765 NW2d 44 (2009). Appellate review of a challenge to the sufficiency of the evidence is deferential. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The reviewing court must draw all reasonable inferences and examine credibility issues in support of the verdict. *Id.*

When assessing a challenge to the sufficiency of the evidence, the trier of fact, not the appellate court, determines what inferences may be fairly drawn from the evidence and the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). This Court must not interfere with the trier of fact's role as the sole judge of the facts when reviewing the evidence. *People v Meshell*, 265 Mich App 616, 619; 696 NW2d 754 (2005).

Lawful self-defense, founded upon necessity, will excuse a defendant from an otherwise intentional homicide. *People v Riddle*, 467 Mich 116, 126; 649 NW2d 30 (2002). "In Michigan, the killing of another person 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); see also MCL 780.792(1)(a). The test to determine whether a defendant acted in lawful self-defense involves three elements: (1) the defendant had an honest and reasonable belief that he was in danger; (2) the degree of danger that was feared was serious bodily harm or death; and (3) the action taken was immediately necessary and involved only the amount of force necessary to defend one's self. CJI2d 7.15; see *Heflin*, 434 Mich at 502-503, 508-509. The defendant has the initial burden of producing evidence of self-defense. *People v Reese*, 491 Mich 127, 155; \_\_\_ NW2d \_\_\_ (2012). The defendant satisfies this burden when he introduces some evidence from which the trier of fact "could conclude that the elements necessary to establish a prima facie defense of self-defense exist." *Id.* at 155-156. Once the defendant meets the initial burden of producing some evidence of self-defense, "the prosecution bears the burden of disproving the common law defense of self-defense beyond a reasonable doubt." *Id.* at 155; CJI2d 7.20.

Defendant contends that there was insufficient evidence because the eyewitness account lacked specificity to prove beyond a reasonable doubt that the victim did not initiate the assault, and there was insufficient evidence of intent to physically harm. We disagree. When the resolution of the issue involves the credibility of two diametrically opposed versions of events, the test of credibility lies where statute, case law, common law, and the constitution have reposed it, with the trier of fact. *People v Lemmon*, 456 Mich 625, 646-647; 576 NW2d 129 (1998). The question of intent presents an issue for resolution by the trier of fact. *People v Whittaker*, 187 Mich App 122, 128; 466 NW2d 364 (1991). "[B]ecause it can be difficult to prove a defendant's state of mind on issues such as knowledge and intent, minimal circumstantial evidence will suffice to establish the defendant's state of mind, which can be inferred from all the evidence presented." *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). "A factfinder can infer a defendant's intent from his words or from the act, means, or the manner employed to commit the offense." *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001).

Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence to support the conviction. The trial court, acting as the trier of fact, was presented with two diametrically opposed versions of events. Defendant testified that the two men argued and the victim threatened to get "his boys" to go after defendant. Then, the victim allegedly struck defendant in the neck. Defendant testified that he merely struck the victim with a slap, and the victim fell back and hit his head on the concrete. On the contrary, the eyewitness testified that he observed two men arguing in the street who were "nose to nose." Defendant then dropped his shoulder and appeared to punch the victim with a closed fist. He observed only one blow, and it made a loud sound, like a firecracker. The eyewitness saw and heard the victim's head hit the concrete. In light of the factual circumstances and credibility determination viewed in the light

most favorable to the prosecution, there was sufficient evidence that defendant intended to strike the victim and did not act in self-defense. *Contempt of Henry*, 282 Mich App at 656; *Meshell*, 265 Mich App at 619; *Hawkins*, 245 Mich App at 439.

Defendant also contends that the trial court improperly misapplied the burden of proof. A review of the record reveals that defendant testified that he acted in self-defense. However, the trial court expressly found that this testimony was not credible. On the contrary, the trial court found the testimony from the eyewitness to be credible. In light of the trial court's rejection of defendant's testimony of self-defense, defendant failed "to establish a prima facie defense of self-defense." *Reese*, 491 Mich at 155. In light of the trial court's findings regarding credibility and the rejection of the claim of self-defense, any challenge to the trial court's purported misstatement regarding the burden of proof does not provide defendant with appellate relief.

Affirmed.

/s/ Christopher M. Murray

/s/ Karen M. Fort Hood

/s/ Stephen L. Borrello