

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 27, 2018

v

CHRISTIAN DAVID LUCKETT,

Defendant-Appellant.

No. 340329
Wayne Circuit Court
LC No. 17-003331-01-FC

Before: O'BRIEN, P.J., and TUKEL and LETICA, JJ.

PER CURIAM.

A jury convicted defendant Christian Lockett of assault with intent to do great bodily harm less than murder (AWIGBH), MCL 750.84, and assault with a dangerous weapon (felonious assault), MCL 750.82. The trial court sentenced Lockett to 29 months to 10 years' imprisonment for the AWIGBH conviction and one to four years' imprisonment for the felonious assault conviction. Lockett appeals as of right. We affirm Lockett's convictions, vacate his sentences, and remand for resentencing.

I. FACTS

This case arises from a confrontation between Lockett and Shane Jones that occurred at a bar in Van Buren Township. They had no prior relationship, but began conversing over drinks purchased by Lockett. Jones agreed to drive Lockett to an ATM to get cash. After Lockett did so, Jones abandoned Lockett on the side of the road because Lockett was "wasting his time" and refused to give Jones money for gas. Jones drove back to the bar, and Lockett returned later on foot. The two men avoided each other until Lockett was walking out of the bar sometime later. Lockett claimed that he was leaving to smoke a cigarette, while Jones claimed that the bar's security asked for Jones's help to kick Lockett out of the bar. The exact circumstances notwithstanding, it is undisputed that Lockett stabbed Jones in the stomach with a 3- to 4-inch knife, purportedly in self-defense. The incident was captured on surveillance footage.

At sentencing, the trial court assessed 25 points for offense variable (OV) 6 (intent to kill or injure), MCL 777.36, over Lockett's objection. Subsequently, Lockett filed a motion for a

new trial or, in the alternative, for judgment notwithstanding the verdict.¹ The trial court denied both motions. Lockett now appeals as of right.

II. DISCUSSION

Lockett argues that the trial court erred by denying his posttrial motions. We disagree.

A trial court's denial of a motion for a new trial is reviewed for an abuse of discretion. *People v Powell*, 303 Mich App 271, 276-277; 842 NW2d 538 (2013). "An abuse of discretion occurs when the trial court renders a decision falling outside the range of principled decisions." *Id.* at 277 (quotation marks and citation omitted). A defendant's motion for a new trial may be granted in the interest of justice or to prevent a miscarriage of justice. *People v Lemmon*, 456 Mich 625, 635; 576 NW2d 129 (1998). A motion for a new trial may also be granted if the jury's verdict is against the great weight of the evidence. *Id.* "The test to determine whether a verdict is against the great weight of the evidence is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003). Importantly, "[i]t is the province of the jury to determine questions of fact and assess the credibility of witnesses." *Lemmon*, 456 Mich at 637. Because the jury determines questions of fact and assesses the credibility of witnesses,

[c]onflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial. [U]nless it can be said that directly contradictory testimony was so far impeached that it was deprived of all probative value or that the jury could not believe it, or contradicted indisputable physical facts or defied physical realities, the trial court must defer to the jury's determination. [*Musser*, 259 Mich App at 219 (quotation marks and citations omitted; second alteration in original).]

This Court reviews de novo a trial court's denial of a motion for directed verdict. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). In doing so, we view "the evidence in a light most favorable to the prosecutor to determine whether a rational trier of fact could have found that the essential elements of the offense were proven beyond a reasonable doubt." *People v Couzens*, 480 Mich 240, 244; 747 NW2d 849 (2008).

Defendant asserted the affirmative defense of self-defense, shifting the burden to the prosecutor to prove beyond a reasonable doubt that defendant did not act in self-defense. *People v Roper*, 286 Mich App 77, 86; 777 NW2d 483 (2009). In 2006, the Michigan Legislature passed the Self-Defense Act (SDA), MCL 780.971 *et seq.*, "codif[ying] the circumstances in which a person may use deadly force in self-defense or in defense of another person without having the duty to retreat." *People v Dupree*, 486 Mich 693, 708; 788 NW2d 399 (2010). Section 2 of the SDA states:

¹ The trial court correctly concluded that, under MCR 6.419(C), Lockett's motion for judgment notwithstanding the verdict is properly analyzed as a motion for a directed verdict of acquittal.

(1) An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if . . . the following applies:

(a) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual.

* * *

(2) An individual who has not or is not engaged in the commission of a crime at the time he or she uses force other than deadly force may use force other than deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if he or she honestly and reasonably believes that the use of that force is necessary to defend himself or herself or another individual from the imminent unlawful use of force by another individual. [MCL 780.972.]

Jones testified that he agreed to help the bar's security guards remove Lockett from the premises. Jones acknowledged that he pushed Lockett once, but claimed that he did not behave aggressively toward Lockett in any other manner or verbally threaten him. Jones had his hands in his pockets and continually advised Lockett that he needed to leave or he would be "removed from the property." One of the bar's security guards came outside shortly before Lockett stabbed Jones, but the security guard did not engage in the confrontation. According to Jones, Lockett was standing near a wall, but could have retreated into the parking lot on his right side. While Lockett's testimony presented a vastly different chain of events, he admitted that he had no reason to believe that Jones was armed and that Jones did not ball his hands into fists as though he was preparing to attack.

A rational juror could have found from this evidence that Lockett did not honestly and reasonably believe that he faced an imminent unlawful use of force.² Despite Lockett's assertion that he was being verbally threatened and cornered by three men, it was for the jury to determine which of the conflicting stories was more credible. The jury also viewed the surveillance footage showing the moments leading up to the stabbing and could have concluded that the video evidence supported Jones's description of the altercation. Furthermore, even if the jury determined that Lockett's belief of imminent harm was honest and reasonable, it could still conclude from the evidence that Lockett's use of a knife to stab Jones in the stomach was an excessive use of force, thereby depriving Lockett of the protections of the SDA. See *People v Guajardo*, 300 Mich App 26, 35; 832 NW2d 409 (2013) ("In general, a defendant does not act in justifiable self-defense when he or she uses excessive force . . ."). Either of these findings

² It stands to reason that if Lockett could not establish the need to use nondeadly force to defend himself from an imminent unlawful use of force by Jones, he could not establish an honest and reasonable belief that deadly force was necessary to prevent his imminent death or great bodily harm.

could have negated Lockett's claim of self-defense and led a rational juror to conclude that the prosecution proved beyond a reasonable doubt that Lockett did not act in self-defense when he stabbed Jones. Therefore, we reject Lockett's contention that the trial court erred by denying his motion for a directed verdict of acquittal.

We also reject Lockett's assertion that the jury's verdict was against the great weight of the evidence. Two conflicting versions of the pertinent events were presented at trial. Conflicting testimony, without more, is an insufficient ground to grant a new trial. *Musser*, 259 Mich App at 219. The evidence does not preponderate so heavily against the verdict that it would be a miscarriage of justice to allow it to stand. The surveillance footage supports Jones's version of events and, even if this were not the case, the trial court's decision to not grant Lockett's motion for a new trial is reviewed for an abuse of discretion. The trial court's decision in this case falls within the range of principled decisions and, therefore, was not an abuse of discretion.

Finally, Lockett argues that the trial court erred by assessing 25 points for OV 6 because OV 6 should not have been scored at all. Pursuant to MCL 777.22(1), OV 6 should only be scored if the sentencing offence is "homicide, attempted homicide, conspiracy or solicitation to commit a homicide, or assault with intent to commit murder." Although Lockett was charged with an alternative count of assault with intent to murder, the jury found him guilty of the lesser charge of AWIGBH. But for this scoring error, the minimum sentence recommended by the sentencing guidelines would have been 19 to 38 months' imprisonment, rather than a term of 29 to 57 months. See MCL 777.65. The prosecution concedes this error and acknowledges that Lockett is entitled to resentencing. We agree and accept the prosecution's confession of error and remand for resentencing. See *People v Strawther*, 480 Mich 900 (2007) (remanding for resentencing based upon the prosecution's confession of error).

We affirm Lockett's convictions, vacate his sentences, and remand for resentencing. We do not retain jurisdiction.

/s/ Colleen A. O'Brien
/s/ Jonathan Tukel
/s/ Anica Letica