FILED
OCT 25 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed October 25, 1983
vs.	)	
MABEL DENTON,	)	3-262/68602
Defendant-Appellant.	)	

Appeal from Black Hawk District Court - Carroll E. Engelkes, Judge.

Defendant appeals her conviction of voluntary manslaughter in violation of Iowa Code section 707.4 (1981). AFFIRMED.

Linda Del Gallo, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Steven M. Foritano, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden, and Sackett, JJ.

DONIELSON, J.

Defendant appeals her conviction of voluntary manslaughter in violation of Iowa Code § 707.4. She claims there was insufficient evidence to support the trial court's finding that she killed the victim without justification. Defendant also asserts that her trial counsel gave her ineffective assistance when he did not move for a directed verdict of acquittal. We affirm.

This is the second time this case has appeared before this court. In State v. Denton, No. 66205 (Iowa Ct. App., filed December 30, 1981), we reversed the dismissal of the charge against defendant on speedy trial grounds and remanded for trial. Defendant was charged in the shooting death of Robert Gunn with whom she had been living. She filed a notice of intent to rely on the defense of self-defense, claiming that Gunn, who was intoxicated at the time, was abusing and threatening her and that she shot him to protect herself. Defendant was tried to the court which found her guilty of voluntary manslaughter and sentenced her to a prison term not to exceed ten years. She brought this appeal.

I.

Defendant's primary argument is that there was insufficient evidence to support her conviction; specifically, she claims that the court erred in rejecting her self-defense theory. "When a self-defense issue is raised, prosecution must prove nonexistence of self-defense beyond a reasonable doubt." State v. Beyer, 258 N.W.2d 353, 356 (Iowa 1977). To rebut the claim of self-defense, the State need prove only one of the following:

> (1) the defendant was the provocator in initiating or continuing the difficulty which resulted in the shooting; or
>
> (2) the defendant did not believe he was in imminent danger of death or injury and that use of force was not necessary to save him; or
>
> (3) he did not have reasonable grounds for such belief; or
>
> (4) the force used was unreasonable.

State v. Elam, 328 N.W.2d 314, 319 (Iowa 1982). In examining questions of evidentiary sufficiency, we examine all of the record evidence in the light most favorable to the State. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). A finding of guilt "is binding upon this court unless there is no substantial evidence in the record to support it or such finding is clearly against the weight of the evidence." State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981).

We believe the record contains substantial evidence to support the court's finding that defendant shot the victim without justification. The only evidence to support the self-defense claim was given by defendant, but the court specifically found that her version of what happened was not credible. The determination of witness credibility is a function for the factfinder. State v. Williams, 315 N.W.2d 45, 58 (Iowa 1982). The court's belief that defendant's testimony in this case was not credible is particularly well-founded—she gave many different and inconsistent versions of what happened; for example, she first stated that she thought the victim had a knife but couldn't see it and later stated she in fact saw the glimmer of a knife. Indeed, she did not even mention any claimed justification or self-defense until the fourth time she talked with the police.

In any event, there is sufficient evidence that defendant killed the victim without having reasonable ground to believe she was "in imminent danger of death or injury and that the use of force was not necessary to save [her]." Elam, 328 N.W.2d at 319. Her claim that the gun discharged automatically is questionable in view of the fact that she fired three shots. Her claim that she shot the victim in self-defense is rebutted by the fact that the victim was shot in the back and from such a distance that no gun powder or residue was found on his clothing. The trial court did not err in concluding that there was sufficient evidence to support defendant's conviction.

II.

Defendant also claims that her trial attorney was ineffective for failing to

move for a judgment of acquittal. To prevail on a claim of ineffective assistance of counsel, she must show that her attorney failed to perform an essential duty and that prejudice resulted from such failure. Henderson v. Scurr, 313 N.W.2d 522, 524 (Iowa 1981). We are satisfied that defendant could not have been prejudiced by the failure to move for an acquittal; in fact, she does not even claim any prejudice. As we already determined, the court's judgment of conviction was supported by sufficient evidence. Any motion for a judgment of acquittal would certainly have been overruled. Defendant's attorney apparently and appropriately deemed such a motion frivolous, noting that this case was tried by the court and not a jury.

Finding no reversible error, we affirm defendant's conviction and sentence.

AFFIRMED.