

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY T. WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

July 27, 2001

No. 223063

Wayne Circuit Court

LC No. 98-013850

Before: Wilder, P.J., and Hood and Griffin, JJ.

MEMORANDUM.

Defendant appeals as of right from jury convictions of first-degree felony murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b, for which he was sentenced to mandatory life and two years' imprisonment, respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that the trial court erred in denying his request for a jury instruction on self-defense. This Court reviews a claim of instructional error de novo. *People v Hubbard (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996).

The trial court must instruct the jury on the defendant's theory of the case if it is supported by the evidence. *People v Hoskins*, 403 Mich 95, 100; 267 NW2d 417 (1978). A killing 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, 508; 456 NW2d 10 (1990). The test for determining whether a defendant acted in lawful self-defense has three parts: "1) defendant honestly [and reasonably] believed that he was in danger, 2) the degree of danger which he feared was serious bodily harm or death, and 3) the action taken by the defendant appeared at the time to be immediately necessary, *i.e.*, defendant is only entitled to use the amount of force necessary to defend himself." *Id.*; *People v Deason*, 148 Mich App 27, 31; 384 NW2d 72 (1985). The defendant need not testify to warrant an instruction on self-defense as long as the other evidence in the case supports the theory. *Hoskins, supra*.

The evidence showed that defendant purposely obtained a gun before going to the store where the crime was committed. Witnesses at the scene did not observe the initial encounter between defendant and the victim, but saw or heard a gunshot and then saw defendant chasing

the victim and firing at him. Defendant's stepfather testified that defendant had told him that he was standing outside the store when the victim approached him with the gun so he shot him. Assuming defendant's first shot was prompted by the victim accosting defendant with a gun, the evidence clearly showed the victim was not killed by that shot; the witnesses that the victim was running away from defendant when defendant fired the shot that killed him or at least seriously wounded him. Because the victim was running away from defendant and was not shooting at defendant while doing so, he no longer presented a danger of harm, life-threatening or otherwise, to defendant, and thus defendant was not entitled to use deadly force at the time he killed the victim. Therefore, the trial court did not err in ruling that the evidence did not support an instruction on self-defense.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin