

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSE ISRAEL ESCALONA-MARTINEZ,

Defendant-Appellant.

UNPUBLISHED

January 6, 2009

No. 283067

Ingham Circuit Court

LC No. 07-001079-FH

Before: Zahra, P.J., and O’Connell and Fort Hood, JJ.

MEMORANDUM.

After a jury trial, defendant was convicted of two counts of resisting and obstructing a police officer resulting in injury, MCL 750.81d(2), and one count of domestic violence, second offense, MCL 750.81(3). He was sentenced to two years’ probation with 108 days incarceration. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E).

Defendant contends the trial court abused its discretion by refusing to give a “defense of others” jury instruction. We disagree.

Jury instructions are to be read as a whole rather than extracted piecemeal to establish error. *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001). The instructions must include all elements of the charged offenses, and must not exclude relevant issues, defenses, and theories supported by the evidence. *People v Dobek*, 274 Mich App 58, 82; 732 NW2d 546 (2007).

The elements of self-defense or defense of others are as follows: (1) the defendant honestly and reasonably believed there was danger; (2) the danger amounted to serious bodily harm or death; (3) the defendant’s actions at the time were reasonably necessary for self-defense or defense of others; and (4) the defendant was not the initial aggressor. *People v Riddle*, 467 Mich 116, 119, 120 n 8; 649 NW2d 30 (2002).

The trial court did not abuse its discretion by failing to give a “defense of others” jury instruction because there was simply no basis for such an instruction. According to the testimony of the police officers at the scene, defendant was the initial aggressor during the incident. The officers did nothing that would make defendant reasonably believe that he had to use force to protect his son from serious bodily harm or death. Further, according to defendant’s

testimony, defendant did not even use force against the officers. Thus, under either the officers' or defendant's version of the incident, the evidence simply does not support a "defense of others" instruction.

Defendant also claims that we should reconsider this Court's decision in *People v Ventura*, 262 Mich App 370; 686 NW2d 748 (2004), in which we held that MCL 750.81d(2) does not allow the use of force against a known law enforcement official making an arrest, even if the arrest is illegal. Although we are required by MCR 7.215(J)(1) to follow *Ventura*, we would do so regardless because we believe it is sound law.

Affirmed.

/s/ Brian K. Zahra
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood