

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY ANDRE EMERY,

Defendant-Appellant.

UNPUBLISHED

February 7, 1997

No. 188803

Detroit Recorder's Court

LC No. 94-007006

Before: Gribbs, P.J., and Holbrook, Jr., and J.L. Martlew,* JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of assault with intent to commit murder, MCL 750.83; MSA 28.278, felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). We affirm.

Defendant argues that the trial court erred by not reading the jury instructions on self-defense. Defendant argues that there was some evidence that there may have been another gun at the scene. Specifically, casings from different manufacturers were found at the scene and there was testimony that one bullet hole in the wall originated from a shot outside the house. We find no merit to this argument.

The trial court is obligated to instruct with regard to a defense only where there is some evidence to support giving that instruction. *People v Cross*, 187 Mich App 204, 206; 466 NW2d 368 (1991); *People v Curry*, 175 Mich App 33, 40-41; 437 NW2d 310 (1989). Where evidence of an element of self-defense is clear and uncontested, it is error to fail to instruct on that element even in the absence of a request. *Id.* at 41. In order to make a case for self-defense, three elements must be established: (1) it must appear that the defendant was not the aggressor, (2) it must appear to the defendant that he was in danger of suffering grievous bodily injury; and (3) it must also be shown by evidence that there was no way open for the defendant to retreat and that his only safety was in repelling the attack by physical means. *People v Turner*, 37 Mich App 226, 229; 194 NW2d 546 (1971).

* Circuit judge, sitting on the Court of Appeals by assignment.

There was no evidence of any of these elements in the instant case. There was testimony that only defendant had a gun during the incident. Defendant pulled out his gun, threatened, and shot at the victims with no apparent provocation. Moreover, defendant chased and shot his victim from behind. These are not the actions of one who is acting in self-defense. Thus, defendant was not entitled to a jury instruction on self-defense.

Affirmed.

/s/ Roman S. Gibbs

/s/ Donald E. Holbrook, Jr.

/s/ Jeffrey L. Martlew