

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL CORDELL STONECIPHER,

Defendant-Appellant.

UNPUBLISHED

April 10, 2001

No. 220260

Oakland Circuit Court

LC No. 96-149885-FH

Before: Doctoroff, P.J., and Holbrook, Jr., and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of felonious assault, MCL 750.82; MSA 28.277, reckless discharge of a firearm at an occupied structure, MCL 750.234b; MSA 28.431(2), careless discharge of a firearm causing injury, MCL 752.861; MSA 28.436(21), and two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; MSA 28.424(2). Defendant was sentenced as an habitual offender, second offense, MCL 769.10; MSA 28.1082, to concurrent prison terms of two to six years for his felonious assault conviction, two to six years for his reckless discharge conviction, and one to three years for his careless discharge causing injury conviction. Defendant was also sentenced to two consecutive two-year prison terms for his felony-firearm convictions. We affirm.

Defendant first claims that the trial court erred by refusing his request for jury instructions on self-defense. Defendant argues that because the actions of the police were unlawful, his actions constituted justifiable resistance. Accordingly, he asserts he was entitled to have the jury instructed on a theory of self-defense. We disagree. We review jury instructions “as a whole to determine if the trial court made an error requiring reversal.” *People v Cain*, 238 Mich App 95, 127; 605 NW2d 28 (1999). “Instructions must cover . . . all material issues, defenses, and theories that have evidentiary support. Conversely, an instruction that is without evidentiary support should not be given.” *People v Wess*, 235 Mich App 241, 243; 597 NW2d 215 (1999)(citation omitted).

In order for a defendant to claim he acted in justifiable self-defense, “it is necessary that the adversary’s force be, or at least that the defendant reasonably believe it to be, ‘unlawful’” LaFave & Scott, *Criminal Law*, § 5.7, p 455 (Abridgment, 2d ed). See also *Detroit v Smith*, 235 Mich App 235, 238; 597 NW2d 247 (1999)(“A claim of self defense . . . first requires that a defendant has acted in response to an assault.”). There is nothing in the record to suggest that the

police actions were unlawful. The evidence showed that the police were responding to a call placed by the brother of defendant that defendant was suicidal and armed with a shotgun. The officer who took this call testified that he also called defendant, who confirmed that he was suicidal and armed with a shotgun. Defendant testified that he knew the people outside his home were police officers. Given these circumstances, and the events as they unfolded at defendant's home, we do not believe that the trial court abused its discretion in refusing to give a self-defense instruction to the jury. The actions of the police were neither unlawful nor excessive.

Defendant also contends that, excepting his statutorily mandated felony-firearm sentences, the sentences imposed by the trial court violated the principle of proportionality. *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990). Again, we disagree. "This Court reviews a trial court's sentence imposed on an habitual offender for an abuse of discretion." *People v Reynolds*, 240 Mich App 250, 252; 611 NW2d 316 (2000). The sentences imposed were within the limits authorized by MCL 760.10; MSA 28.1082. The trial court considered defendant's underlying criminal history and determined that sentence enhancement was appropriate. After reviewing the record, we do not conclude that the trial court abused its discretion. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997).

Affirmed.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Joel P. Hoekstra