

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MELVIN RODNEL SYLVESTER,

Defendant-Appellant.

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UNPUBLISHED

April 23, 2002

No. 226600

Kent Circuit Court

LC No. 99-009340-FC

Before: Owens, P.J., and Markey and Murray, JJ.

PER CURIAM.

Defendant appeals by right his bench trial convictions for assault with intent to murder, MCL 750.83, felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. Convicted as a second habitual offender, MCL 769.10, defendant was sentenced to concurrent prison terms of fifteen to sixty years and three to six years for the assault with intent to murder and felonious assault convictions, respectively. He also received a consecutive two-year sentence for the felony-firearm conviction.

This case arises from defendant's shooting of brothers Tesfazghi and Awot Solomon. According to the Solomons, the shootings followed a disagreement over money defendant owed them. The Solomons contend that defendant arrived at their home on the evening of September 8, 1999, and without provocation, produced a gun and proceeded to shoot them. By contrast, while defendant did not deny the shootings, he contends that he was acting in self-defense in response to the victims' threats to instruct their pit bull terrier to attack him.

Defendant's contention on appeal is that the trial court erred in rejecting his self-defense claim. We disagree. Whether a defendant acted in self-defense is a question of fact. *People v Prather*, 121 Mich App 324, 330; 328 NW2d 556 (1982). In order to give due regard to the trial court's opportunity to weigh the testimony and to assess the credibility of the witnesses, we will not set aside findings of fact unless they are clearly erroneous. *People v Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997). A finding is clearly erroneous when this Court is left with the definite and firm conviction that a mistake has been made. *People v Lombardo*, 216 Mich App 500, 504; 549 NW2d 596 (1996).

In establishing self-defense, the defendant must demonstrate that: (1) he honestly and reasonably believed that he was in danger; (2) the danger feared was death or serious bodily harm; (3) the action taken appeared at the time to be immediately necessary; and (4) defendant

was not the initial aggressor. *People v Heflin*, 434 Mich 482, 502-503; 456 NW2d 10 (1990); *People v Deason*, 148 Mich App 27, 31; 384 NW2d 72 (1985); *People v Bright*, 50 Mich App 401, 406; 213 NW2d 279 (1973). Defendant's failure to retreat is a factor in determining the necessity of his actions. *People v Crow*, 128 Mich App 477, 489; 340 NW2d 838 (1983). Generally, in Michigan a defendant has a duty to retreat. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000).

The trial court in this case found that although the victims were unarmed, defendant had a firearm in his immediate control. The trial court also determined that the pit bull dogs on the premises were of negligible threat to defendant at the time of the shootings. In addition, the trial court found that Tesfazghi Solomon, one of the shooting victims, had no means of "doing anything whatever to the defendant some eight or nine feet distant while the defendant had a loaded firearm pointed directly at his chest." Furthermore, the trial court failed to find that Tesfazghi provoked the attack by counting. Finally, the court concluded that defendant had a reasonable avenue of retreat because even if the front door had been locked, it was feasible that defendant could have walked over and unlocked it while holding the Solomons at gunpoint, or directed one of the Solomons to unlock it for him.

An application of the trial court's factual determinations to the above-stated elements of self-defense supports the trial court's conclusion that

the prosecution has proven beyond a reasonable doubt, first, that this is not a case of self-defense by defendant acting in a reasonable response to what he perceived to be a threatening situation; and, number two, I believe the prosecution has proven beyond a reasonable doubt that the defendant had a reasonable way out of this by retreating and did not take it.

Defendant's principal concern on appeal centers on the fact that the testimony of the complaining witnesses was self-serving and inconsistent. These are essentially issues of credibility. Resolutions of factual disputes and credibility issues are reserved for the trier of fact. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). We will not disturb those findings absent clear error. Based on the factual determinations, which each victim supported by substantial and corroborated testimony, and because the trial judge was in a better position to determine the witnesses' credibility, we cannot conclude that the trial court clearly erred by rejecting defendant's self-defense claim.

We affirm.

/s/ Donald S. Owens  
/s/ Jane E. Markey  
/s/ Christopher M. Murray