

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM DEAN HUNTER,

Defendant-Appellant.

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UNPUBLISHED

February 17, 2004

No. 244409

Oakland Circuit Court

LC No. 02-182583-FC

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions by a jury of assault with intent to commit murder, MCL 750.83, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erred by failing to instruct the jury with regard to the theory of self-defense and that his attorney erred by failing to request the instruction.

Even if somewhat imperfect, jury instructions do not create error requiring reversal if they fairly presented the issues for trial and sufficiently protected the defendant's rights. *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). "Error does not result from the omission of an instruction if the charge as a whole covers the substance of the omitted instruction." *Id.* We review a claim of instructional error de novo. *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002).

For lawful self-defense, the evidence must show that the defendant honestly and reasonably believed he was in danger and that the danger feared was death or serious bodily harm. *People v George*, 213 Mich App 632, 634-635; 540 NW2d 487 (1995). The threatened harm must be imminent. *People v Riddle*, 467 Mich 116, 129 n 21; 649 NW2d 30 (2002). "Furthermore, the defense is not available when a defendant is the aggressor unless he withdraws from any further encounter with the victim and communicates such withdrawal to the victim." *People v Kemp*, 202 Mich App 318, 323; 508 NW2d 184 (1993).

To establish ineffective assistance of counsel, a defendant must show that counsel's performance was deficient such that he was not performing as the "counsel" guaranteed by the federal and state constitutions. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

Counsel's deficient performance must have resulted in prejudice. *Id.* To demonstrate the existence of prejudice, a defendant must show a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *Id.*

Defendant's failure to request an instruction on the substantive law of self-defense or to object on the record to the trial court's failure to read such an instruction constitutes forfeiture of the claim of error and precludes appellate relief in the absence of a clear or obvious error affecting the outcome of the case. MCL 768.29; *People v Carines*, 460 Mich 763; 597 NW2d 130 (1999). Defendant acknowledged that complainant never brandished a weapon and admitted that he fired the first shot in response to what he simply *assumed* was complainant's act of reaching for a gun in her purse. We conclude that this evidence did not clearly support the giving of an instruction on self-defense. *George, supra* at 634-635. The evidence demonstrated that defendant was the initial aggressor in that he fired a gun without justification. See *Kemp, supra* at 323. No instructional error occurred, *Canales, supra* at 574, and no clear or obvious error affected defendant's substantial rights. *Carines, supra* at 763. Trial counsel's actions did not result in prejudice. *Carbin, supra* at 600.

Affirmed.

/s/ Bill Schuette  
/s/ Patrick M. Meter  
/s/ Donald S. Owens