

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM CLEMENS,

Defendant-Appellant.

UNPUBLISHED

May 6, 2004

No. 239527

Wayne Circuit Court

LC No. 00-008061-01

Before: Gage, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of assault with intent to murder, MCL 750.83, carrying a concealed weapon, MCL 750.227, and possession of a firearm in the commission of a felony, MCL 750.227b. Defendant was sentenced to thirty-one years and three months to sixty years' imprisonment for the assault with intent to murder conviction, three to five years' imprisonment for the carrying a concealed weapon conviction, and two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant first contends that the trial court erred in failing to instruct the jury on self-defense. We disagree. At the close of the prosecution's case, defendant, through counsel, specifically agreed with the court and the prosecution that he was not entitled to a self-defense instruction. This intentional relinquishment and abandonment constitutes a waiver of the issue on appeal. *People v Hall (On Remand)*, 256 Mich App 674, 679; 671 NW2d 545 (2003). Thus, defendant's waiver extinguishes any error. *Id.*

Next, defendant contends that the trial court erred in limiting defense counsel's closing argument by not allowing him to argue a self-defense theory. We disagree. A trial court's decision to limit counsel's arguments and statements is reviewed for an abuse of discretion. *People v Buck*, 197 Mich App 404, 413; 496 NW2d 321 (1992). An attorney may comment on the evidence adduced at trial and may draw reasonable inferences from this evidence. *People v Peterson*, 450 Mich 349, 373; 537 NW2d 857 (1995). Reasonable inferences could not be drawn from the evidence elicited at trial to support a theory of self-defense. The only evidence presented at trial established that defendant brought a gun to the scene and was the initial aggressor. The contradictions between the victim's prior statements and the testimony presented at trial did not alter these basic facts and did not give rise to an inference that the victim had a motive to kill defendant. Given that the evidence did not support a self-defense theory, it would

be improper for counsel to argue this during his closing. *Id.* Thus, the trial court did not abuse its discretion by precluding this defense argument. *Buck, supra.*

Lastly, defendant contends that the trial court inappropriately scored Offense Variable (OV) 6 because the statutory scoring guidelines in effect at the time he committed this crime, MCL 777.22, did not include scoring for an assault with intent to murder offense. A defendant must challenge the scoring of the sentencing guidelines at or before sentencing or as soon as he could reasonably have discovered the inaccuracy. MCR 6.429(C); *People v McGuffey*, 251 Mich App 155, 165-166; 649 NW2d 801 (2002). Defendant did not raise this specific issue at or before sentencing, nor did he argue that the challenge was brought as soon as the inaccuracy could reasonably have been discovered. Therefore, defendant is foreclosed from raising this issue on appeal. *Id.*; *People v Wilson*, 252 Mich App 390, 392-393; 652 NW2d 488 (2002). Moreover, defendant's challenge is premised on form over substance and ignores the established rule that a score will be upheld when there is any evidence to support it. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

Affirmed.

/s/ Hilda R. Gage
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood