

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAYLON LAMOND RANDALL,

Defendant-Appellant.

UNPUBLISHED

October 26, 2004

No. 249892

Wayne Circuit Court

LC No. 03-004221-01

Before: Wilder, P.J., and Hoekstra and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant Daylon Lamond Randall was convicted of assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to fifty-one months to fifteen years' imprisonment for the assault with intent to commit murder conviction, to be served consecutive to two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

The shooting that gave rise to the charges against defendant stemmed from a confrontation two days earlier that the victim initiated with defendant after discovering that defendant was having an affair with the victim's girlfriend. According to defendant, during this confrontation the victim threatened to kill him. Two days later, the victim and defendant encountered each other by chance while defendant was on the porch of the residence where the earlier confrontation had occurred, and the victim was walking toward the residence. Defendant, after talking through the mail slot to his girlfriend, from whom he had become estranged as a consequence of the revelation that he was having an affair with the victim's girlfriend,¹ turned and noticed the victim approaching the residence through a field across the street. Defendant proceeded off the porch and headed toward the victim, who continued walking toward the residence. The two men dispute what happened as they approached one another. Defendant claims that the victim produced a handgun and he responded, in self-defense, by firing into the

¹ Apparently the affair between defendant and the victim's girlfriend occurred while the two couples were living together in this same residence along with their six children, three by each couple. The residence was rented to defendant and his girlfriend. Before trial, defendant and his girlfriend reconciled.

air a weapon that he was carrying. In contrast, the victim maintains that as they approached one another, defendant produced a weapon and pointed it at him, whereupon he turned and fled as defendant fired at least four shots. As a result of this confrontation, the victim sustained a gunshot wound to his arm.

On appeal, defendant makes three claims of error, all of which arise from his assertion that he fired his handgun in self-defense and the fact that the trial court did not instruct the jury that a person under attack in his dwelling does not have a duty to retreat. Specifically, defendant maintains that the evidence at trial was insufficient to convict him of assault with intent to commit murder because defendant had no duty to retreat from his front porch, and consequently “the prosecution failed to present sufficient evidence to prove that he was not acting in self-defense;” that the trial court erred in instructing the jury on the duty to retreat and in failing to instruct the jury that defendant had no duty to retreat “since the complainant confronted [defendant] on the front porch of his leased home;” and that defendant was denied the right to the effective assistance of counsel due to his “attorney’s failure to object to the trial court’s instructions on self-defense and request an instruction that [defendant] had no duty to retreat in his own home.”

In a criminal case, due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). In reviewing the sufficiency of the evidence, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. *Id.* Further, the instructions that the trial court gives to the jury must not exclude material issues, defenses, and theories that are supported by the evidence. *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002). We review claims of instructional error de novo. *Id.* Finally, to demonstrate ineffective assistance of counsel it must be shown that defendant’s counsel’s performance fell below an objective standard of reasonableness and resulted in prejudice to defendant. *People v Kimble*, 470 Mich 305, 314; 684 NW2d 669 (2004). Counsel is not ineffective for failing to request an instruction inapplicable to the facts of the case. *People v Truong (After Remand)*, 218 Mich App 325, 341; 553 NW2d 692 (1996).

Generally, the use of deadly force against another in self-defense by one who is free from fault is justified if, under the circumstances, he honestly and reasonably believes that he is in imminent danger of death or great bodily harm and that it is necessary for him to exercise deadly force. *People v Riddle*, 467 Mich 116, 119, 126-127; 649 NW2d 30 (2002). The touchstone of self-defense is necessity and, under certain circumstances, the failure to retreat or otherwise avoid the intended harm may indicate a lack of necessity in resorting to the use of deadly force in self-defense. *Id.* at 127. However, the “castle” doctrine holds that “retreat is not a factor in determining whether a defensive killing was necessary when it occurred in the accused’s dwelling.” *Id.* at 134. The castle doctrine applies to the dwelling and its attached appurtenances, but does not extend to other areas such as the driveway, yard, or detached garage. *Id.* at 135, 137. However, a porch is part of a dwelling for purposes of the no retreat rule. *People v Canales*, 243 Mich App 571, 576; 624 NW2d 439 (2000). “Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt.” *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

In this case, each of the three claims of error that defendant advances on appeal are predicated on defendant's factual assertion that he was on the porch of his residence when he fired a handgun in self-defense to ward off the armed attack of the victim. However, after careful review of the evidence in this case, we conclude that this factual assertion is contrary to the evidence presented at trial.

At trial, only defendant and the victim offered direct testimony of the disputed confrontation between them that resulted in the victim sustaining a gunshot wound to his arm.² Despite the differences in their testimony regarding what happened, both defendant and the victim testified, in essence, that defendant walked off the porch of the residence after observing the victim approach through the field across the street. Specifically, the victim testified that when he first observed defendant, defendant "turned and started walking down off the porch," that defendant and the victim walked toward each other, and that defendant got to the sidewalk on his side of the street before defendant pulled the gun and the victim turned and fled. Similarly, defendant himself testified that when he pulled a gun on the victim that he was off the porch and that behind him was "nothing but the stairs and the porch" and the house.

Because the facts do not support defendant's assertion that he was on the porch of the residence that was rented to him and his girlfriend at the time that he alleges that the victim confronted him with a gun and he responded by firing gunshots into the air, we find without merit all three of the issues that defendant raises in this appeal. Under these circumstances, defendant was not entitled to an instruction concerning no duty to retreat from one's dwelling, and the trial court did not err in failing to instruct on the castle doctrine aspect of the law of self-defense. *Canales, supra* at 577. Further, trial counsel was not ineffective because she is not required to make a request for an instruction inapplicable to the facts of the case. *Truong, supra*. Finally, defendant's claim that the evidence was insufficient fails because, like the other claims, it rests on the assumption that defendant was not required to retreat from the porch of his residence.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Joel P. Hoekstra
/s/ Donald S. Owens

² The defendant's girlfriend, with whom defendant was conversing through the mail slot just before this incident, testified to hearing gunshots, but was not in a position to see what happened.