

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRELL STORY,

Defendant-Appellant.

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UNPUBLISHED

January 10, 2008

No. 273919

Wayne Circuit Court

LC No. 06-006712-01

Before: Fitzgerald, P.J., and Markey and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions for assault with intent to commit great bodily harm less than murder, MCL 750.84, and operating a vehicle under the influence of intoxicating liquor (OUIL) causing serious injury, MCL 257.625(5). He was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 10 to 20 years for each conviction. We affirm.

Defendant maintains that the trial court committed error warranting reversal when it admitted evidence of three prior felony convictions, two for armed robbery and one for larceny from a person, contrary to the provisions of MRE 609. This Court reviews a trial court's decision to admit or exclude evidence, including evidence of prior convictions, for an abuse of discretion. *People v Werner*, 254 Mich App 528, 538; 659 NW2d 688 (2002). We conclude that there was no error warranting reversal.

The trial court initially ruled that evidence of the prior convictions would be inadmissible. At the time, the court cautioned defendant that if he offered testimony that created a false impression or misled the jury regarding his character, the ruling would be revisited. During direct examination, defendant testified not simply that he was at a club before the events in question, but also explained to the jury that he was celebrating a successful business accomplishment with his colleagues. The trial court determined that the testimony created a false impression that defendant was a successful businessman and upstanding citizen.

Although evidence of prior convictions may be introduced to rebut specific statements of the defendant who testifies at trial, see *People v Taylor*, 422 Mich 407, 414-415; 373 NW2d 579 (1985), we decline to address whether defendant's testimony opened the door to the introduction of the evidence of his prior criminal history. Instead, on review of the entire record, we conclude

that any error was harmless. Therefore, even if the trial court did err, the error would not warrant relief. See *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

Next, defendant argues that the court abused its discretion when it refused to give a requested self-defense instruction to the jury. We disagree. A trial court must instruct the jury regarding the applicable law. A criminal defendant has a right to a properly instructed jury and a requested instruction must be given if the evidence supports it. *People v Rodriguez*, 463 Mich 466, 472-473; 620 NW2d 13 (2000). Conversely, an instruction not supported by the evidence should not be given. *People v Wess*, 235 Mich App 241, 243; 597 NW2d 215 (1999). In *People v Trammel*, 70 Mich App 351, 355; 247 NW2d 311 (1976), this Court specifically held that where the defendant argued that his actions were an accident, the trial court did not err when it did not instruct the jury on self-defense.

To be lawful self-defense, the evidence must establish that: (1) the defendant honestly believed 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) the defendant was not the initial aggressor. *People v Riddle*, 467 Mich 116, 119, 120 n 8; 649 NW2d 30 (2002). In this case, defendant repeatedly testified that striking the complainant was an accident. Similarly, defense counsel claimed in the opening statement that the whole thing was an unfortunate accident. Defendant testified that complainant could not get to him because he was locked in the car with the windows rolled up. He further testified that because he was in a locked car, he was safe from the garbage can thrown by complainant. Defendant also admitted that he slapped complainant first. By defendant's own testimony, the elements of self-defense are clearly absent. Accordingly, the trial court did not err when it denied defendant's request to instruct the jury on self-defense.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Michael R. Smolenski