

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BILAL CHAABAN,

Defendant-Appellant.

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UNPUBLISHED

October 28, 2008

No. 274509

Wayne Circuit Court

LC No. 03-008585-01

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

PER CURIAM.

Defendant was convicted by a jury of two counts of first-degree felony murder, MCL 750.316(1)(b), two counts of assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent terms of life imprisonment for each murder conviction and 15 to 30 years for each assault conviction, to be served consecutive to a two-year term of imprisonment for his felony-firearm conviction. He appeals as of right. We affirm.

I. Facts and Procedural History

Defendant was previously convicted of the same offenses in 2003. In a prior appeal, this Court affirmed defendant's convictions, *People v Chaaban*, unpublished opinion per curiam of the Court of Appeals, issued March 29, 2005 (Docket No. 253513), but our Supreme Court reversed defendant's convictions and remanded for a new trial on the ground that the trial court "erroneously denied defendant's unequivocal request to represent himself." *People v Chaaban*, 474 Mich 917; 705 NW2d 345 (2005).

Defendant was convicted of murdering Angela Caizza and Lowell Clark at Caizza's Detroit residence. Two other victims, James Duprie and Jessica Clark were also present, but were not killed.

Earlier on the day of the offense, defendant was involved in a confrontation with Duprie in a park. During the dispute, words were exchanged and Duprie punched defendant several times in the face. Defendant testified that Lowell Clark also participated in the assault, but Duprie testified that Lowell Clark was not present. According to defendant, Lowell Clark was part of a gang and had assaulted him before in 2002, causing him to be hospitalized. Defendant explained that after the most recent assault, Lowell Clark and Duprie mentioned that they knew

where defendant lived and would come after him. Defendant took that as a threat and was concerned for his family members, who lived with defendant at his home. Later in the day, defendant obtained an AK-47 assault rifle and went to Caizza's house. Duprie, Caizza, Lowell Clark, and Jessica Clark were present on the porch. When defendant arrived at the house, he started shooting, causing everyone on the porch to run inside the house. Defendant entered the house and continued shooting, killing Caizza and Lowell Clark.

Defendant testified that he went to Caizza's house as a "show of force" to intimidate Duprie and Lowell Clark. When he arrived, the people on the porch started yelling and screaming at him, and then started coming down the steps and someone threw a bottle at him. Defendant explained that he "snapped" and "lost it" and started shooting his gun.

The trial court instructed the jury on self-defense, but denied defendant's request for an instruction on defense of others.

## II. Jury Instruction on Defense of Others

Defendant's sole issue on appeal is that the trial court erred by failing to instruct the jury on defense of others. We disagree.

As this Court explained in *People v Dobek*, 274 Mich App 58, 82; 732 NW2d 546 (2007):

Claims of instructional error are generally reviewed de novo by this Court, but the trial court's determination that a jury instruction is applicable to the facts of the case is reviewed for an abuse of discretion. A defendant in a criminal trial is entitled to have a properly instructed jury consider the evidence against him or her. The trial court's role is to clearly present the case to the jury and to instruct it on the applicable law. Jury instructions must include all the elements of the offenses charged against the defendant and any material issues, defenses, and theories that are supported by the evidence. Jury instructions are reviewed in their entirety, and there is no error requiring reversal if the instructions sufficiently protected the rights of the defendant and fairly presented the triable issues to the jury. [Citations omitted.]

A person may use deadly force in defense of another person. *People v Kurr*, 253 Mich App 317, 321; 654 NW2d 651 (2002). For that defense to apply, however, the defendant must honestly and reasonably believe that another person's life is in imminent danger or that there is a threat of serious bodily harm and that it is necessary to use deadly force. *Id.* at 320-321; *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002).

The evidence in this case did not support an instruction on defense of others. Although defendant claimed that he was attempting to protect his family, it is undisputed that none of his family members were present at the time of the offense. Further, there was no evidence that defendant's use of deadly force was necessary to protect his family from an imminent threat or danger. Rather, at the time of the offense, the victims were at Caizza's house. The evidence showed that in response to an earlier confrontation, defendant obtained an assault rifle, sought out the victims, and then shot them. Because the evidence did not support an instruction on

defense of others, the trial court did not err by denying defendant's request for an instruction on that defense.

Affirmed.

/s/ Kurt T. Wilder  
/s/ Kathleen Jansen  
/s/ Donald S. Owens