

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KIMDON BRUCE PETERS,

Defendant-Appellant.

UNPUBLISHED

June 19, 2012

No. 304359

Oakland Circuit Court

LC No. 2010-233526-FH

Before: GLEICHER, P.J., and M. J. KELLY and BOONSTRA, JJ.

PER CURIAM.

Defendant Kimdon Bruce Peters appeals by right his jury convictions of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced him to consecutive prison terms of 270 days for the felonious assault conviction and two years for the felony-firearm conviction. Because we conclude there were no errors warranting relief, we affirm.

Defendant's charges stem from an incident that occurred when Michael Prisza tried to repossess defendant's truck. Prisza testified that he went to defendant's home to repossess the truck; he stated that he announced his presence and produced a repossession order. At that point, defendant reached into the truck, pulled out a handgun, pointed it at Prisza's head, and said, "I will blow your f**king head off." When the police spoke to him about the incident, defendant merely stated that he did not have to turn over the vehicle.

Defendant argues that the trial court erred when it denied his request to instruct the jury on self-defense. To the extent that a claim of instructional error involves a question of law, this Court reviews the issue de novo. *People v Dupree*, 486 Mich 693, 702; 788 NW2d 399 (2010). However, this Court reviews a trial court's determination that a jury instruction applies to the facts of the case for an abuse of discretion. *Id.*

A person is privileged to use deadly force against another if he or she "honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual" or if he or she "honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent sexual assault of himself or herself or of another individual." MCL 780.972(1). Similarly, a person may use force other than deadly force if he or she "honestly and reasonably

believes that the use of that force is necessary to defend himself or herself or another individual from the imminent unlawful use of force by another individual.” MCL 780.972(2).

Here, there was no evidence that defendant honestly and reasonably believed that he needed to resort to the use of force to prevent imminent death or great bodily harm, or to prevent an imminent sexual assault. Likewise, there was no evidence that he honestly and reasonably believed that the use of force was necessary to defend himself from an imminent unlawful use of force. MCL 780.972. Rather, the evidence showed that Prisza was unarmed, announced his presence, and produced a repossession order. On appeal, defendant emphasizes the fact that Prisza is taller, but a difference in size, without evidence of threatening conduct, does not establish that defendant might have had a reasonable belief that Prisza was about to harm him. Given the evidence, we cannot conclude that the trial court abused its discretion when it determined that a self-defense instruction was not warranted.

Defendant additionally raises several issues in his pro se brief. Defendant contends that he had the right to defend himself from Prisza, who defendant contends was committing the crimes of home invasion, carjacking, and assault. Accordingly, defendant again argues that the trial court erred when it refused to instruct the jury on self-defense. In support of his argument, defendant relies on facts that were not presented at trial. As indicated previously, defendant did not testify or offer any witnesses at trial, and the testimony that was presented did not support an inference that defendant could have honestly and reasonably believed that he was subject to an imminent threat of death, great bodily harm, or some other imminent unlawful use of force. Accordingly, we reject defendant’s claim that the trial court erred by refusing to instruct the jury on self-defense.

Defendant also contends that the complaint is defective because it is conclusory and does not identify sources or establish the basis for credibility. Citing *Ralph v Police Court of El Cerrito*, 84 Cal App 2d 257; 190 P2d 632 (1948), defendant asserts that “[w]ithout a valid complaint outlining [an] actual criminal violation supported by probable cause, any judgment or sentence rendered is obviously void.” Defendant’s reliance on *Ralph* is misplaced because that case involves the complete failure to file a complaint, whereas defendant here merely asserts that the complaint that was filed was too conclusory. MCR 6.101 requires that a complaint “include the substance of the accusation against the accused and the name and statutory citation of the offense.” The complaint/information filed in this case lists the charged offense as assault with a dangerous weapon and contains the following allegations:

[T]he defendant, contrary to law,

did make an assault upon Michael Prisza with a dangerous weapon, to-wit: a pistol, but without intending to commit the crime of murder or to inflict great bodily harm less than the crime of murder; Contrary to . . . MCL 750.82. . . .

Thus, the complaint identified the charge, the statutory citation for the charge, and the factual predicate for the charge. Accordingly, it satisfied the basic requirements for a valid complaint. See *People v Bladel (After Remand)*, 421 Mich 39, 73; 365 NW2d 56 (1984) (“The complaint need not contain every fact which contributed to the affiant’s conclusions, nor must every factual

allegation be independently documented.”), abrogated not in relevant part *People v Cipriano*, 431 Mich 315; 429 NW2d 781 (1988).

Defendant also argues that the trial court lost or lacked jurisdiction over this case because the charges were “frivolous and moot,” and “lack[ed] merit and standing.” Defendant’s discussion of this issue and his cited authority suggest evidentiary challenges. However, a court’s jurisdiction over a case does not depend on the merits of the allegations or the admissibility of evidence. Circuit courts are courts of general jurisdiction and have subject-matter jurisdiction over felony cases. *People v Lown*, 488 Mich 242, 268; 794 NW2d 9 (2011). Further, the circuit court acquired personal jurisdiction over defendant when the district court filed a return after defendant waived the preliminary examination. *People v Goecke*, 457 Mich 442, 458-459; 579 NW2d 868 (1998). As such, this claim is without merit.

Defendant argues that the sheriff’s deputies violated his due process rights by recovering his handgun through an illegal search and seizure. Because defendant did not challenge the admissibility of the gun at trial, this issue is unpreserved. Therefore, to obtain relief on appeal, defendant must establish a plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Voluntary consent is an exception to the warrant requirement. *People v Dagwan*, 269 Mich App 338, 342; 711 NW2d 386 (2005). Here, testimony established that defendant’s wife gave the police officers access to the garage and the house, and that she opened the safe where defendant kept his firearm. This testimony indicates that the police lawfully recovered the gun from defendant’s house through consent. Although defendant contends that his wife acted “under threat, duress and coercion” because she was afraid that she would be arrested, there is no evidence to support that assertion. Accordingly, defendant has not demonstrated that the admission of the gun was plain error.

Finally, defendant argues that trial counsel was ineffective because he admitted in closing argument that he was not fully educated about the law of repossession. Because the trial court did not hold an evidentiary hearing on this claim, our review is limited to errors apparent on the record. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997). To establish ineffective assistance of counsel, defendant must show that his trial counsel’s acts or omissions fell below an objective standard of reasonableness under prevailing professional norms and that it is reasonably probable that, but for the act or omission, the result of the lower court proceeding would have been different. *People v Uphaus (On Remand)*, 278 Mich App 174, 185; 748 NW2d 899 (2008).

Defendant’s trial lawyer’s statement that he lacked knowledge about the law of repossession did not amount to ineffective assistance of counsel warranting relief. Defendant fails to explain how this statement prejudiced him or how his trial lawyer’s performance was otherwise deficient given his state of knowledge. As such, defendant has not sustained his burden on this claim of error. *Id.*

There were no errors warranting relief.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly
/s/ Mark T. Boonstra