

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 5/16/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 12-0330
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
STEVEN EDWARD HOFFMAN,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Mohave County

Cause No. S8015CR201100351

The Honorable Derek C. Carlisle, Judge *Pro Tempore*

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
by Joseph T. Maziarz, Chief Counsel
Criminal Appeals Section
Attorneys for Appellee

Jill L. Evans, Mohave County Appellate Defender Kingman
Attorney for Appellant

D O W N I E, Judge

¶1 Steven Edward Hoffman appeals his conviction for criminal damage. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Hoffman was charged with criminal damage of more than \$1,000, a class six felony, and two counts of assault, class two misdemeanors. The trial evidence established that Hoffman's truck hit a truck driven by a water company employee as the latter was backing down a dirt road, departing from property that Hoffman managed. The driver and his passenger testified that the incident began when Hoffman approached them on foot, stated that they were trespassing, and threatened to get his shotgun and shoot them. The employees repeatedly explained that they were working for the local water company, were there to read the water meter, and that the road they were on was a utility easement. The employees testified that as they were backing out to leave, Hoffman drove at their truck at a rapid speed, stopping short of hitting them twice, and finally hitting them on the third occasion, damaging the truck's front bumper. The driver obtained a repair estimate for \$1,057.69.

¶3 Hoffman testified he was unaware of any easement and believed the men were trespassing because their vehicle was unmarked and they had no identification. Hoffman admitted threatening to get his shotgun. Hoffman testified he had not intended to hit the other vehicle with his truck, but was simply taking his usual shortcut to the store on the dirt road, and might have bumped the vehicle as he drove toward it while it was

backing out. Other trial evidence revealed, though, that Hoffman had advised the investigating officer on the day of the incident that he drove in an intimidating manner to get the other driver to move.

¶4 The jury acquitted Hoffman of the assault charges, but found him guilty of the lesser-included offense of criminal damage of more than \$250 but less than \$1,000, a class one misdemeanor. The court placed Hoffman on probation and ordered restitution of \$993.40. Hoffman filed a timely notice of appeal. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031, and -4033(A).

DISCUSSION

¶5 Hoffman argues the court erred in denying his request for a defense of premises instruction as to the charge of criminal damage. "A person or his agent in lawful possession or control of premises is justified in . . . using physical force against another when and to the extent that a reasonable person would believe it immediately necessary to prevent or terminate the commission or attempted commission of a criminal trespass by the other person in or upon the premises." A.R.S. § 13-407(A).

¶6 The court gave the defense of premises instruction as to the assault charges, but denied Hoffman's request to give it for the criminal damage charge, reasoning the facts did not

support it. The court found it was undisputed that the water company employees were leaving the property at the time of the criminal damage, and there was no evidence Hoffman rammed their truck to force them off the property or to stop them from trespassing. Rather, the court ruled, the collision "was either by his testimony inadvertent or by the other testimony malicious."

¶7 We review the denial of a jury instruction for an abuse of discretion, deferring to the trial court's assessment of the evidence. *State v. Wall*, 212 Ariz. 1, 3, 5, ¶¶ 12, 23, 126 P.3d 148, 150, 152 (2006) (citations omitted). We determine whether the evidence, viewed in the light most favorable to the defendant, warranted giving the instruction. *State v. King*, 225 Ariz. 87, 90, ¶ 13, 235 P.3d 240, 243 (2010) (citation omitted). A defendant is entitled to a self-defense instruction "if it is supported by the 'slightest evidence.'" *State v. Hussain*, 189 Ariz. 336, 337, 942 P.2d 1168, 1169 (App. 1997). A court, though, "does not err in refusing to give a jury instruction that is an incorrect statement of the law, does not fit the facts of the particular case, or is adequately covered by the other instructions." *Id.*

¶8 We find no abuse of discretion here. As the court found, Hoffman's own testimony failed to support any claim that he rammed the water company truck with the intent of preventing

