

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DERRICK TYRONE HILL,

Defendant-Appellant.

UNPUBLISHED

December 17, 1996

No. 187668

LC No. 93-49687 FC

Before: Young, P.J., and O’Connell and W.J. Nykamp,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of voluntary manslaughter, MCL 750.321; MSA 28.553, and possession of a firearm during the commission of a felony. MCL 750.227b; MSA 28.424(2). He now appeals by leave granted, and we affirm.

Defendant brings only one allegation of error on appeal. He contends that his convictions must be reversed because the trial court gave misleading instructions with respect to his asserted defense of self-defense. The court concluded that the evidence concerning whether defendant was in his home at the time of the incident in question was conflicting, and, accordingly, read the jury both CJI2d 7.16 (Duty to Retreat to Avoid Using Deadly Force) and CJI2d 7.17 (No Duty to Retreat While in Own Dwelling). The court considered this a question of fact, and allowed the jury to determine whether defendant was in his home and to then apply the appropriate rule of law. Defendant now submits that because *all* the evidence produced at trial indicated that he was in his home at the time of the shooting, it was error requiring reversal for the court to read CJI2d 7.16 to the jury.

Defendant’s contention is not supported by the record. Kasandra Seabron, an undisputed resident of the address at which the homicide occurred, testified that only she and Monique Hemphill lived there. Thus, evidence did exist indicating that defendant was not in his home at the time of the incident – the testimony of Seabron. As set forth in *People v Harris*, 190 Mich App 652, 664; 476 NW2d 767 (1991), “[j]ury instructions must include all the elements of the charged offense and must not exclude material issues, defenses, and theories if there is evidence to support them.” Here, because

* Circuit judge, sitting on the Court of Appeals by assignment.

our review of the record indicates that the conflicting testimony supported both CJI2d 7.16 and CJI2d 7.17, we find no error where the court read both instructions to the jury.

Affirmed.

/s/ Robert P. Young
/s/ Peter D. O'Connell
/s/ Wesley J. Nykamp