

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY CARTWRIGHT, II,

Defendant-Appellant.

UNPUBLISHED

June 7, 2002

No. 230513

Wayne Circuit Court

LC No. 99-009104

Before: Murphy, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felonious assault,¹ MCL 750.82, and first-degree home invasion, MCL 750.110a(2). He was sentenced as a third-offense habitual offender, MCL 769.11, to two to eight years' imprisonment for the assault conviction and eleven to forty years for the home invasion conviction. Defendant appeals as of right. We affirm.

Defendant's sole issue is that the trial court erred in failing to give his requested instruction on imperfect self-defense. The trial court is required to instruct the jury on the applicable law to the case. MCL 768.29. When a jury instruction is requested on any defense and is supported by the evidence, the instruction must be given to the jury. *People v Mills*, 450 Mich 61, 81; 537 NW2d 909 (1995). If the theory is not supported by the evidence, the requested instruction need not be given. *Id.*

A self-defense claim requires that a defendant honestly and reasonably believes that his life is in imminent danger or that there is a threat of serious bodily harm. *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990). In *People v Kemp*, 202 Mich App 318, 323; 508 NW2d 184 (1993), this Court explained imperfect self-defense:

Imperfect self-defense is a qualified defense that can mitigate second-degree murder to voluntary manslaughter. . . . Where imperfect self-defense is applicable, it serves as a method of negating the element of malice in a murder charge. . . . Although the Michigan Supreme Court has not yet considered the viability of the theory of imperfect self-defense, panels of this Court have

¹ In this regard, we note that defendant was originally charged with assault with intent to murder.

recognized the doctrine where a defendant would have been entitled to invoke the theory of self-defense had he not been the initial aggressor.

The prosecution argued, and the trial court agreed, that imperfect self-defense was only available in cases involving death. The trial court relied on *People v Wytcherly*, 172 Mich App 213, 221; 431 NW2d 463 (1988), which states:

The rule regarding imperfect self-defense applies only to mitigate second-degree murder to voluntary manslaughter where the accused was the initial aggressor. *People v Deason*, 148 Mich App 27, 31-32; 384 NW2d 72 (1985), lv den 428 Mich 869 (1987). An instruction on this rule is clearly inappropriate here where there is no murder and defendant maintained that Detective Heikkila fired first.

The trial court correctly applied the law. Defendant was not entitled to an instruction on imperfect self-defense because there was no murder.

Moreover, the mere fact that defendant was the initial aggressor does not give him an imperfect self-defense claim; he must also show that he honestly and reasonably believed that his life had been in imminent danger or threatened with serious bodily harm. Here, defendant broke into the victim's home and the victim came upon defendant in the night when the victim went into his bathroom and turned on the light. The victim was immediately hit in the head and fell to his knees, whereupon he saw a butcher knife. The victim struggled with the person holding the knife (defendant) and realized that there was another person in the bathroom. The second intruder stabbed the victim and the victim was able to grab defendant around his neck. The second intruder stabbed the victim several times while the victim kept his hands around defendant's neck. Defendant was able to get out of the victim's hold by slashing the victim's wrists. The two intruders ultimately left. Under these circumstances, defendant was not entitled to any type of "self-defense" instruction, imperfect or otherwise. *Heflin, supra*.

Affirmed.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Kirsten Frank Kelly