STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

        Plaintiff-Appellee,

v

RODERICK CANNON,

        Defendant-Appellant.

Before: Fitzgerald, P.J., and Markey and Smolenski, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felonious assault, MCL 750.82, and was sentenced as an habitual offender fourth, MCL 769.12, to a prison term of 58 months to 15 years. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's conviction resulted from an altercation with a woman with whom he had been sharing his apartment. She testified that he was high on drugs and became angry after she walked away from him. She told him that she was moving out. He demanded that she return some money that he had given her, which she did. He also accused her of stealing his wallet. He then ordered her to take her clothes off and threatened to sexually assault her. At some point, he grabbed two steak knives, which he swung at her and stabbed her on the right side of the neck. She picked up a chair to defend herself and used it to beat on some glass in the living room in an effort to draw attention and obtain help. She escaped from the apartment and ran naked to another building where she screamed for help. She was later treated at the hospital. The police found puddles of blood in the apartment.

Defendant testified that he and the complainant argued and he ordered her to return his keys. She tried to take things that belonged to him and he accused her of taking his wallet. She became loud and aggressive and then grabbed a knife and a chair, so defendant also got a knife. Defendant claimed that the woman started swinging the knife at him and hit or pushed him with it, knocking him off balance. The knife fell from her hand and he picked it up and cut her with a swiping motion across her neck. Defendant denied trying to kill her.

On appeal, defendant argues that he was denied a fair trial because the trial court did not instruct the jury on self-defense. Because defendant did not request the instruction or object to

its omission, he must establish a plain error that affected his substantial rights. *People v Gonzalez,* 468 Mich 636, 642-643; 664 NW2d 159 (2003).

The failure to instruct on self-defense was not plain error because the evidence did not support the defense. A person has the right to use deadly force in self-defense only if he honestly and reasonably believes that his life is in imminent danger or that he is being threatened with serious bodily harm. *People v Riddle,* 467 Mich 116, 119; 649 NW2d 30 (2002). A defendant may not claim self-defense where he used excessive force or was the initial aggressor. *People v Kemp,* 202 Mich App 318, 322-323; 508 NW2d 184 (1993). According to defendant's version of the incident, the complainant dropped the knife and defendant picked it up before he cut her on the neck. Thus, defendant admitted that the complainant was unarmed at the time he used deadly force. Even under defendant's version of events, he was not justified in using deadly force.

Defendant also argues that defense counsel's failure to request a self-defense instruction denied him the effective assistance of counsel.

To establish ineffective assistance of counsel, a defendant must show that counsel's representation "fell below an objective standard of reasonableness" and "overcome the strong presumption that his counsel's action constituted sound trial strategy under the circumstances." *People v Toma,* 462 Mich 281, 302; 613 NW2d 694 (2000). Defendant must also demonstrate that counsel's deficient performance "was so prejudicial to him that he was denied a fair trial." *Id*. Because the evidence did not support a self-defense instruction, trial counsel was not ineffective for failing to request it. See *People v Knapp,* 244 Mich App 361, 386; 624 NW2d 227 (2001).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey
/s/ Michael R. Smolenski