

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT E. DONALD,

Defendant-Appellant.

UNPUBLISHED
September 4, 2001

No. 225993
Wayne Circuit Court
LC No. 99-004034

Before: Fitzgerald, P.J., and Gage and C. H. Miel*, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction for felonious assault, MCL 750.82, entered after a bench trial. We affirm.

Defendant's conviction arose out of an altercation at a food store. Although the testimony varied as to how the fight started, defendant admitted that he cut the complainant with a box cutter. The trial court found that without regard to who started the fight, defendant's use of the box cutter could not support a self-defense claim. On appeal, defendant argues that the court erred in applying the law as to self-defense.

To establish a claim of self-defense, the evidence must show that defendant honestly and reasonably believed that the use of force was necessary to protect himself, defendant used only the degree of force necessary at the time to protect himself from the danger, and defendant did not act wrongfully in bringing on the assault. *CJI2d 7.22*; *People v Heflin*, 434 Mich 482; 456 NW2d 10 (1990).

The trial court found that the degree of force used by defendant was not limited to that necessary to protect himself from danger. The trial court was aware of the factual issue and correctly applied the law to that issue. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1997). The court did not clearly err in finding that defendant did not establish the elements of

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

self-defense. MCR 2.613(C); *People v Truong (After Remand)*, 218 Mich App 325; 553 NW2d 692 (1997).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Hilda R. Gage

/s/ Charles H. Miel