

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES DONALD HANNA,

Defendant-Appellant.

UNPUBLISHED

October 21, 2003

No. 242981

Branch Circuit Court

LC No. 00-117164-FH

Before: Griffin, P.J., and Neff and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of assaulting a corrections officer while confined at a jail, MCL 750.197c. We affirm.

The sole argument that defendant makes on appeal is that the trial court erred when it refused to give a jury instruction regarding self-defense after such a request was made by defense counsel.

We review issues of instructional error under a de novo standard of review. *People v Hubbard (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996). When a jury instruction is requested on any defense and is supported by the evidence, it must be given to the jury by the trial judge; however, the trial judge is not required to give the requested instruction if a theory or defense is not supported by the evidence. *People v Mills*, 450 Mich 61, 81; 537 NW2d 909 (1995).

The evidence offered at trial in this case produced two different descriptions of the incident. The prosecution's evidence only supported the theory that defendant attacked the corrections officer first with non-deadly force and that the officer simply met defendant's attack with non-deadly force, facts that would not vest the defendant with the right of self-defense. See *People v Peoples*, 75 Mich App 616; 255 NW2d 707 (1977), overruled in part on other grounds by *People v Carines*, 460 Mich 750, 766 n 14; 597 NW2d 130 (1999), and *People v Townes*, 391 Mich 578; 218 NW2d 136 (1974) (describing the two factual circumstances in which an initial aggressor can regain the right to self defense: (1) where the initial aggressor retreats and communicates his retreat, and (2) where a non-deadly aggressor is met with deadly force).

The defense's sole witness, defendant, described being hit first in the left cheek by the officer. However, instead of stating that he took action in self-defense, defendant denied ever

striking the corrections officer at all. In other words, defendant never claimed that he acted in self-defense; instead, he denied ever committing the required predicate assault, an evidentiary basis that would not support an instruction of self-defense. See *People v Droste*, 160 Mich 66, 80; 125 NW 87 (1910) (holding that a defendant was not entitled to an instruction on self-defense because instead of trying to justify a homicide by arguing self-defense as a bar to prosecution, the defendant denied committing the homicide altogether).

Accordingly, we hold that the trial court did not err when it found insufficient evidentiary support for giving a jury instruction regarding self-defense.

Affirmed.

/s/ Richard Allen Griffin

/s/ Janet T. Neff

/s/ Christopher M. Murray