

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTHEW ERIC BRAY,

Defendant-Appellant.

UNPUBLISHED

July 5, 1996

No. 174723

LC No. 93-002161

Before: O'Connell, P.J., and Gribbs and T. P. Picard,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of felonious assault, MCL 750.82; MSA 28.277. He was sentenced to two-years' probation. Defendant now appeals as of right, challenging the sufficiency of the evidence to support his conviction. We affirm.

When reviewing a claim of insufficient evidence following a bench trial, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994). The elements of the crime of felonious assault are: (1) an assault, (2) with a dangerous weapon (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery. *People v Malkowski*, 198 Mich App 610, 614; 499 NW2d 450 (1993). The crime of felonious assault also includes the element of a present ability or apparent present ability to commit a battery. *People v Grant*, 211 Mich App 200, 202; ___NW2d___ (1995). The intent to place the victim in fear of an immediate battery may be inferred from the circumstances. See *People v Lawton*, 196 Mich App 341; 492 NW2d 810 (1992). Moreover, a knife is considered a dangerous weapon for purposes of the felonious assault statute. MCL 750.82; MSA 28.77. Defendant argues that the prosecution failed to present sufficient evidence to convict him of felonious assault because the complaining witness recanted her preliminary examination testimony and there was insufficient evidence presented at trial to prove that defendant used a dangerous weapon or had the intent to injure or place the victim in reasonable apprehension of an immediate battery.

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

After reviewing the record, we conclude that the prosecution proved that defendant had the intent to injure or place the victim in reasonable apprehension of an immediate battery. Zeigler, the complaining witness, testified at trial that after defendant demanded that she leave his home, he walked toward the kitchen and reached for something. As he turned back around, defendant proceeded toward Zeigler and again indicated that she should leave. Zeigler responded by stating, "if you kill me now . . . our son Alex won't have a mother." Janeen, defendant's wife, exclaimed "Matthew you can't kill her, who's going to raise the baby? Surely not you behind bars." Janeen grabbed defendant's arm and shouted, "no." Moreover, Zeigler testified that although she was not afraid that defendant would kill her, she was frightened because of the fights she and defendant had engaged in in the past. There was sufficient circumstantial evidence to establish that defendant intended to injure Zeigler or place her in reasonable apprehension of an immediate battery.

The prosecution also proved that defendant used a dangerous weapon; a knife. Officer Fouchia, stated that Zeigler told him that defendant grabbed a butcher knife and pointed it at her. Janeen also testified that as defendant emerged from the kitchen and toward Zeigler, she noticed that defendant was holding a butcher knife. There was sufficient evidence presented to demonstrate that defendant committed the assault with a dangerous weapon.

Viewed in the light most favorable to the prosecution, the evidence was sufficient to allow a rational trier of fact to conclude beyond a reasonable doubt that defendant intended to injure or place Zeigler in apprehension of an immediate battery and that defendant assaulted Zeigler with a knife.

Affirmed.

/s/ Peter D. O'Connell

/s/ Roman S. Gibbs

/s/ Timothy P. Pickard