

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERNEST RAGIN,

Defendant-Appellant.

UNPUBLISHED
September 6, 1996

No. 179034
LC No. 89-008572

Before: Corrigan, P.J., and Jansen and M. Warshawsky,* JJ.

MEMORANDUM.

Defendant appeals of right his conviction by jury of felonious assault, MCL 750.82; MSA 28.277. The court sentenced defendant to four years probation, but gave him credit for four years already served.¹ Thus, the trial court ordered the case closed. We affirm.

Defendant argues that the evidence presented at trial was insufficient to establish beyond a reasonable doubt that he used a real gun during the commission of an assault. We disagree.

To resolve this issue, this Court views the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). To support a conviction of felonious assault, the prosecution must prove that the accused used a dangerous weapon during the commission of an assault. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). The evidence presented at trial was sufficient to prove that defendant used a real gun. Both the victim and his wife testified that defendant used a real gun. Although defendant contradicted their testimony by claiming he used a toy water pistol, this conflict is resolved in favor of the prosecution. *Wolfe, supra* at 514-515. Moreover, the jury, as the trier of fact, determines the credibility of witnesses. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). In this case, the jury resolved the testimony in favor of the prosecution. Thus, viewing the evidence in the light most favorable to the prosecution, the testimony was sufficient for a rational trier of fact to conclude that defendant used a real gun while committing the assault.

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

Affirmed.

/s/ Maura D. Corrigan
/s/ Kathleen Jansen
/s/ Meyer Warshawsky

¹ The court previously tried defendant on this charge in a bench trial. Following trial, but before rendering a verdict, the court ordered defendant to undergo a competency evaluation. The court concluded that defendant was incompetent and committed him to psychiatric treatment. One month later, however, a physician determined that defendant was competent to stand trial. The following month, the court determined that defendant was competent. The court then found defendant guilty. On appeal, this Court reversed and remanded, holding that a new trial should be held if defendant was not competent at the time of the bench trial. *People v Ragin*, unpublished opinion per curiam of the Court of Appeals, issued March 17, 1993 (Docket No. 135515). On remand, the court found that defendant had been incompetent to stand for his first trial. The instant trial then went forward in accordance with this Court's order. Defendant's competency for the instant trial was not contested.