

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN PRESTON PHILLIPS,

Defendant-Appellant.

UNPUBLISHED

June 17, 1997

No. 186451

Macomb Circuit Court

LC No. 93-002666-FH

Before: MacKenzie, P.J., and Neff and Markey, JJ.

PER CURIAM.

Originally charged with assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, defendant was convicted by a jury of the lesser offense of felonious assault, MCL 750.82(1); MSA 28.277(1). Sentenced to four years' probation, he now appeals as of right. We affirm.

Defendant's conviction arises from an altercation between defendant and complainant at work, during which defendant cut complainant with a knife. Defendant argues on appeal that there was insufficient evidence to convict him of felonious assault because he acted in self-defense. We disagree.

When reviewing a claim of insufficient evidence, this Court views the evidence in the light most favorable to the prosecution to determine whether a rational jury could find that the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 amended 441 Mich 1201 (1992). Felonious assault requires the prosecution to prove that defendant committed an assault with a dangerous weapon "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).

A defendant may lawfully use force, even deadly force, if he honestly and reasonably believed he was in imminent danger of serious bodily harm or death. *People v Heflin*, 434 Mich 482, 502-503; 456 NW2d 10 (1990). The defendant may only use the amount of force necessary to defend himself and cannot be the initial aggressor. *People v Deason*, 148 Mich App 27, 31; 384 NW2d 72 (1985).

Once a defendant introduces evidence of self-defense, the prosecution has the burden to disprove it beyond a reasonable doubt. *People v Bell*, 155 Mich App 408, 414; 399 NW2d 542 (1986).

In the present case, the prosecution presented evidence from which the jury could determine that defendant was the initial aggressor. Witnesses testified that defendant walked away from the area in which complainant was seated, and that no physical altercation ensued until defendant returned to that area. Several witnesses stated that defendant carried a hook blade knife, and some witnesses stated that defendant had the knife in his hand when he approached complainant. Evidence also suggested that defendant pushed complainant first. Given these facts, we conclude that the prosecution disproved self-defense beyond a reasonable doubt. Because defendant was not justified to act in self-defense, a rational trier of fact could conclude that the elements of felonious assault were proven beyond a reasonable doubt.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Janet T. Neff

/s/ Jane E. Markey