

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH TALLEY, JR.,

Defendant-Appellant.

UNPUBLISHED

September 11, 2007

No. 271178

Wayne Circuit Court

LC No. 06-001156-01

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant appeals of right from his bench-trial convictions of felonious assault, MCL 750.82, domestic violence, MCL 750.81(2), and larceny in a building, MCL 750.360. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that there was insufficient evidence to support the conviction for felonious assault because a hammer is not a per se dangerous weapon; there was insufficient evidence to establish that defendant utilized the hammer as a dangerous weapon; and there was no showing that he threatened the complainant with an immediate infliction of harm. We disagree.

This Court reviews a conviction de novo, *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002), to determine if it is supported by sufficient evidence by “view[ing] the evidence in a light most favorable to the prosecution and determin[ing] whether any 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), amended 441 Mich 1201 (1992), citing *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979). “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

“The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery.” *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999), citing *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). A simple criminal assault “is made out from either an attempt to commit a battery or an unlawful act which places another in reasonable

apprehension of receiving an immediate battery.” *People v Joeseype Johnson*, 407 Mich 196, 210; 284 NW2d 718 (1979), quoting *People v Sanford*, 402 Mich 460, 479; 265 NW2d 1 (1978).

The act of raising a hammer as if to strike someone, while verbally indicating the desire to “knock that person’s head off” constitutes either an attempted battery or, at the least, the commission of an act that would place another in reasonable apprehension of receiving an immediate battery. Defendant appears to admit that an assault occurred.¹

With regard to the dangerous weapon element, a hammer—when used in the manner alleged by the complainant—is clearly a dangerous weapon within the meaning of the statute. MCL 750.82 provides that it applies to one who “assaults another person with a gun, revolver, pistol, knife, iron bar, club, brass knuckles, *or other dangerous weapon.*” [Emphasis supplied.] A hammer is not one of the specifically listed weapons, so the issue for this case is whether it qualifies as a “dangerous weapon.” Defendant concedes that a hammer “assuredly could be used as a dangerous weapon,” but contends that it was not so used in this case.

In this case, the evidence showed that after engaging in a heated argument with the complainant, defendant went to a kitchen drawer, removed the hammer, and then held it in a threatening position while issuing a direct verbal threat that he was going to use it to strike her. In *People v Vaines*, 310 Mich 500, 504-505; 17 NW2d 729 (1945), our Supreme Court held that many articles, including hammers, could be dangerous weapons “if used or carried for the purpose of assault.” See also: *People v Goolsby*, 284 Mich 375, 378; 279 NW 867 (1938). Unlike the pocketknife considered by the *Vaines* Court, the hammer in this case was not an object that defendant ordinarily carried. Moreover, there was no evidence that defendant was in the course of using the hammer for its ordinary purpose (e.g., some construction or repair task) when he obtained it and used it to menace the complainant. Defendant does not dispute that the hammer was capable of causing serious injury. Therefore, the evidence established that defendant used the hammer as a dangerous weapon.

Finally, with regard to the intent element of felonious assault, the intent necessary to satisfy this element is “the intent to injure or place the victim in reasonable apprehension of an immediate battery.” *Avant, supra* at 505. “An intent ... is a secret of a man’s mind and he can disclose it by declarations or by his actions. And actions sometimes speak louder than words.” *People v Quigley*, 217 Mich 213, 217-218; 185 NW 787 (1921). The record shows that defendant and the complainant were involved in a heated argument over the disciplining of their son when defendant picked up the hammer. In fact, the complainant testified that defendant had already smacked her and pushed his fingers in her face, screamed at her, and then cleared his throat and spit in her face. According to her testimony, defendant also told her he hated her, threatened to kill her, and called her a bitch. It was at this point that he went into the kitchen, obtained the hammer, raised it in a threatening manner, and issued additional threats of physical injury. Considering this evidence, defendant disclosed his intent by *both* his words and his actions. The complainant testified that she “seriously believed ... [t]hat he was going to hit [her]

¹ Defendant claims “this is a case of assault as defined in MCL 750.81(2) [simple assault against a spouse] but not such an assault as defined in MCL 750.82.”

with the hammer.” Based on the trial evidence, a person in the complainant’s situation would be justified in reasonably believing that defendant intended to immediately commit a battery. Therefore, viewed in a light most favorable to the prosecution, the evidence was sufficient to establish all the elements of the charged offense of felonious assault.

In a pro se brief filed under Administrative Order 2004-6, Standard 4, defendant additionally argues that (1) the evidence showed that the complainant could not have truthfully testified that he took her money, (2) on January 8, 2006, he was a resident of the apartment where the offenses occurred and therefore could not have been convicted of larceny in a building, and (3) his arrest was illegal because there was no arrest warrant.

The complainant testified she saw defendant take her money and when she confronted him, he claimed the money was his. The evidence thus established that the complainant personally observed defendant take her money. Defendant failed to present any evidence at trial to refute her claim. The complainant’s credibility was a matter for the trial court to resolve. *Avant, supra* at 506. Defendant’s argument is without merit.

Regarding defendant’s pro se claim that he was a resident of the apartment where the crimes took place, and therefore could not be convicted of committing a larceny in that building, defendant did not testify or present any evidence at the trial. When his counsel moved for a directed verdict, he did not argue that defendant was a resident of the apartment; instead he argued that defendant could not be convicted of larceny because there was no asportation. Furthermore, the complainant testified that she resided at the apartment with her three children and that defendant did not live there. She further testified that defendant gained entry to the apartment when their son buzzed him in, and that she was angry with her son for letting defendant in. It is reasonable to infer that if defendant was a resident of the apartment, he would not have to be buzzed in past the security door and that the complainant could not be upset with her son for allowing another resident of the apartment to enter. Finally, on cross-examination, the complainant repeated and specifically denied that defendant lived, or had lived, in the apartment. Defendant claims on appeal that he showed proof of his residence to the police and that his appellate counsel possesses this information, but no such evidence has been made part of the record.² This argument is without merit.

Finally, defendant claims in his pro se brief that his arrest was illegal because there was no arrest warrant for him on the date he was arrested. Defendant was arrested because the complainant provided the police with sufficient probable cause from which they could conclude that defendant had committed the ninety-three-day misdemeanor of assault and battery/assault and battery of a spouse or the felony offense of felonious assault. A police officer may arrest a person without a warrant where there is reasonable cause to believe that either a felony or a misdemeanor punishable by more than ninety-two days’ imprisonment has been committed and

² Appellate counsel has not attached those items to his appellate brief, made reference to them, or moved to expand the record to admit them. Therefore, defendant’s assertions in this regard are unsupported by any record facts and may not be considered. *People v Traylor*, 245 Mich App 460, 464; 628 NW2d 120.

there is reasonable cause to believe the person arrested committed the offense. MCL 764.15(1)(d). The offenses of assault and battery and spousal battery are ninety-three-day misdemeanors. MCL 750.81(1) and (2).³ Felonious assault is a four-year felony. MCL 750.82. Therefore, defendant's claim that his arrest was invalid because there was no arrest warrant is meritless.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto

³ See *People v Stephen*, 262 Mich App 213, 219; 685 NW2d 309 (2004) (warrantless arrest of the defendant was valid pursuant to MCL 764.15(1)(d) because there was reasonable cause to believe the defendant committed a ninety-three-day misdemeanor).