

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GIAVONNI RAMARR HECTOR,

Defendant-Appellant.

UNPUBLISHED

June 23, 2009

No. 283849

Wayne Circuit Court

LC No. 07-014486-FC

Before: Borrello, P.J., and Meter and Stephens, JJ.

PER CURIAM.

Defendant was convicted by a jury of felonious assault, MCL 750.82, and sentenced to a term of 23 to 48 months' imprisonment. He appeals as of right. We affirm.

Defendant was convicted of assaulting an employee of a police impound lot with a baseball bat that had nails in one end. The jury rejected defendant's claim that he acted in self-defense.

Defendant first argues that there was insufficient evidence to support his conviction for felonious assault. We disagree.

Defendant incorrectly asserts that evidence that raises an inference of guilt is insufficient to support a conviction, and that any doubts about the evidence must be resolved in his favor. In reviewing a challenge to the sufficiency of the evidence, this Court reviews the evidence de novo in a light most favorable to the prosecution to 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 Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979); *People v Oliver*, 242 Mich App 92, 94-95; 617 NW2d 721 (2000). "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) (citation omitted). A reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury's verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

"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).

Evidence was presented that defendant struck the employee in the head with a baseball bat at least three times. Defendant admitted striking the employee twice. Viewed most favorably to the prosecution, the evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant assaulted the employee with a dangerous weapon (a baseball bat), with the intent to injure him or place him in reasonable fear or apprehension of an immediate battery.

Defendant also argues that the prosecution did not meet its burden of disproving his claim of self-defense, or defense of his brother. A defendant acts in self-defense, or defense of others, when he honestly and reasonably believes that his life, or the life of another, is in imminent danger or that there is a threat of serious bodily harm. *People v James*, 267 Mich App 675, 677; 705 NW2d 724 (2005). Once a defendant introduces evidence of self-defense, the prosecutor bears the burden of disproving it beyond a reasonable doubt. *Id.*

Conflicting testimony was presented concerning the circumstances of the altercation that preceded defendant striking the employee with the baseball bat. Although defendant asserted that his brother and the lot manager were both fighting each other, testimony of other witnesses indicated that the manager was not fighting back and was being beaten by defendant's brother. Defendant also asserted that the employee who obtained the bat was swinging the bat at defendant's brother. The employee testified that he did not swing or hit defendant's brother with the bat, but only twice poked defendant's brother with the bat in an attempt to stop him from assaulting the lot manager. The employee also denied using the end of the bat with the nails to attempt to stop the assault.

Viewed in a light most favorable to the prosecution, the jury reasonably could have found that the employee was not using the bat in manner that created a threat of serious bodily harm. Further, the jury could have found that once defendant obtained the bat, any perceived threat was no longer imminent. Thus, there was sufficient evidence to allow the jury to find that defendant was not acting in lawful self-defense when he assaulted the employee in the head with the bat.

Finally, defendant argues that the trial court abused its discretion by refusing to admit another bat, which defendant testified was substantially similar to the bat used during the offense, as demonstrative evidence. We disagree. A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *People v Jones*, 240 Mich App 704, 706; 613 NW2d 411 (2000).

"Demonstrative evidence, including physical objects alleged to be similar to those involved in the incident at issue, is admissible where it may aid the fact finder in reaching a conclusion on a matter material to the case." *People v Castillo*, 230 Mich App 442, 444; 584 NW2d 606 (1998). Although there is no "specific criteria" for determining when to admit demonstrative evidence, it must first satisfy traditional requirements for relevance and probative value. *People v Unger*, 278 Mich App 210, 247; 749 NW2d 272 (2008). In this case, the actual bat that was used during the offense was admitted into evidence. Defense counsel explained that the demonstrative exhibit was prepared because he believed that the actual bat could not be located. However, that concern had been resolved. Although defendant claimed that the condition of the actual bat had changed since the incident because many nails had been removed, the jury was able to view the bat and see the number and placement of the nail holes in the wood.

Because the actual bat was available and could be examined by the jury, the trial court did not abuse its discretion by excluding the demonstrative exhibit.

Affirmed.

/s/ Stephen L. Borrello

/s/ Patrick M. Meter

/s/ Cynthia Diane Stephens