

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BETTY J. WALKER,

Defendant-Appellant.

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UNPUBLISHED

July 2, 1999

No. 208770

Recorder's Court

LC No. 97-001991

Before: Bandstra, C.J., and Whitbeck and Talbot, JJ.

PER CURIAM.

The trial court convicted defendant, following a bench trial, of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and sentenced her to one and one-half to ten years in prison. Defendant appeals as of right. We affirm.

I. Basic Facts And Procedural History

The victim in this matter lived and worked in a shelter in Detroit at which defendant also stayed periodically. In late December, 1996, according to the victim, she was in the restroom at the shelter when defendant began banging on the door, saying there was a gas leak and that the building was going to blow up. The victim checked the gas stove and called another shelter worker, while defendant waited nearby. According to the victim, she attempted to tell defendant to calm down because there was nothing to worry about, when defendant suddenly attacked her with an ice pick, stabbing her several times in the chest and arms.

According to the victim, she pushed defendant away and ran to a nearby house, where neighbors called the police. The victim testified that she had been stabbed on the left side between five and ten times and that her lung had been punctured. Police responded to the neighbor's call and found defendant barricaded in a back bedroom of the shelter, but talked her into coming out. Eventually, an officer found the ice pick under defendant's mattress.

Defendant testified that she was homeless and had been living in motels before going to stay at the shelter, that the victim was "taller and bigger" than her, that she had suffered a breakdown, and that

she was taking Haldol to control visual and auditory hallucinations. Defendant testified that, about a week earlier, the victim had hit her and thrown a vacuum cleaner down, spilling the dirt inside, saying that defendant was not pulling her weight at the shelter.

Defendant further testified that, on the day of the incident, she knocked on the bathroom door to tell the victim that she thought she smelled gas, which was allegedly giving her chest pains, that she had seen that one of the pilot lights was out on the stove, and that she could not get it lit. According to defendant, the victim said that she did not smell anything, so defendant told the victim that defendant was going to call the other shelter worker to see if someone would investigate the smell. According to defendant, she was already talking on the phone when the victim came out of the bathroom and snatched the phone away from defendant and repeated that she did not smell any fumes. Defendant testified that the victim talked on the phone briefly, hung up, and went into the kitchen. Defendant further testified that, because they had already had one physical confrontation, she went into the bedroom and got an ice pick which she carried in her purse. Defendant stated that she believed that the victim had gone in the kitchen to get a weapon, and indicated she had seen a can of mace in the shelter before.

According to defendant, when she came out to the living room, the victim chided her for always “starting trouble,” and they began fighting. Defendant testified that the victim pushed her in the chest first, knocking her over a table, and then started hitting her and grabbing her, so defendant “hit her” back with the ice pick. Defendant admitted stabbing the victim several times in the chest area “to save my life,” but also admitted that she did not try to escape. Defendant testified that after she called the police and informed them of the altercation, she went into her bedroom because the police told her not to leave and not to let anyone else into the shelter.

## II. Standard Of Review

The sufficiency of the evidence is to be evaluated in the light most favorable to the prosecution. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). The test is whether a rational trier of fact could find every element of the crime proven beyond a reasonable doubt. *Id.* Resolving credibility disputes is within the exclusive province of the trier of fact. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). The trier of fact may also draw reasonable inferences from the evidence. *People v Reddick*, 187 Mich App 547, 551; 468 NW2d 278 (1991).

## III. Sufficiency Of The Evidence

Defendant argues that the evidence was insufficient to support her conviction because the victim’s testimony was incredible, inconsistent, and inherently untrustworthy. Defendant further argues that the prosecution failed to disprove her claim of self-defense beyond a reasonable doubt. We disagree.

The victim testified that, without warning, defendant stabbed her several times in the chest area with an ice pick. The victim sustained several injuries, including a possible punctured lung, and was hospitalized for five days. Viewed in a light most favorable to the prosecution, the victim’s testimony

was sufficient to establish the elements of the crime beyond a reasonable doubt. *People v Bailey*, 451 Mich 657, 668-669; 549 NW2d 325 (1996); see also *People v Turner*, 213 Mich App 558, 567; 540 NW2d 728 (1995) (intent may be inferred from use of a deadly weapon). The credibility of the victim's testimony was a matter for the trier of fact to resolve and this Court will not resolve it anew. *Vaughn, supra*.

The victim's testimony, viewed most favorably to the prosecution, was also sufficient to enable the trial court to find beyond a reasonable doubt that defendant was the initial aggressor and that any alleged belief of impending danger was not an honest or reasonable belief. Accordingly, defendant was not acting in lawful self-defense. *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990).

Defendant did not raise the issue of imperfect self-defense at trial. In any event, the trial court's findings, supported by the record, that defendant was the aggressor in the attack and acted with the specific intent to cause great bodily harm, render any alleged claim of imperfect self-defense inapplicable. *People v Kemp*, 202 Mich App 318, 323-324; 508 NW2d 184 (1993); *Turner, supra*.

Defendant's claim that the verdict was against the great weight of the evidence is not preserved for appeal because defendant did not raise this issue in a motion for new trial. *People v Bradshaw*, 165 Mich App 562, 565; 419 NW2d 33 (1988).

Affirmed.

/s/ Richard A. Bandstra

/s/ William C. Whitbeck

/s/ Michael J. Talbot