

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

YVETTE BUSH,

Defendant-Appellant.

UNPUBLISHED
December 1, 2000

No. 216057
Wayne Circuit Court
LC No. 98-000564

Before: Zahra, P.J, and Hood and McDonald, JJ.

MEMORANDUM.

Defendant appeals as of right from her jury trial conviction for assault and battery, MCL 750.81; MSA 28.276. Defendant was sentenced to one year probation. We affirm.

Defendant's only issue on appeal is that the prosecution failed to present sufficient evidence to support her assault and battery conviction. We disagree.

When determining whether sufficient evidence has been presented to sustain a conviction, we review the evidence in the light most favorable to the prosecution and determine 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, amended 441 Mich 1201 (1992). The offense of assault requires proof of "either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery." *People v Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996). "A battery is the consummation of an assault." *Id.* Intent to commit an assault or battery is also an element of the offense to be proved. *Id.* The intent element may be established by circumstantial evidence. *Id.* at 663.

The prosecution presented sufficient evidence to establish the elements of assault and battery beyond a reasonable doubt. Defendant was one of several individuals involved in a group beating of complainant on September 18, 1997. Defendant hit complainant in the head with a stick several times during a beating that lasted from five to fifteen minutes. Throughout the beating, complainant was crouched over, protecting her head. Janea Brown also witnessed defendant fighting complainant with a stick in her hand. Because defendant's hitting of complainant with a stick constituted a battery, which is the consummation of an assault, the elements of the offense were satisfied. The totality of the circumstances of this incident clearly

indicate that defendant intended to assault and batter complainant, specifically intending to hit her with a stick. Defendant hit complainant several times and the beating of complainant by defendant and others lasted from five to fifteen minutes with complainant suffering serious head and facial injuries as a result. This evidence, when viewed in the light most favorable to the prosecution, was sufficient to convict defendant of assault and battery.

Defendant's argument on appeal focuses on the credibility of the witnesses. Questions of credibility are left to the trier of fact and will not be decided anew on appeal. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). In this case, the jury had the opportunity to hear and observe all the witnesses, found the prosecution's witnesses credible, and convicted defendant accordingly. We will not revisit the jury's credibility determinations.

Affirmed.

/s/ Brian K. Zahra
/s/ Harold Hood
/s/ Gary R. McDonald