

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTONIO ISRA OPALEWSKI, a/k/a ANTONIO
ISRAEL OPALEWSKI,

Defendant-Appellant.

UNPUBLISHED
September 4, 2003

No. 239916
Jackson Circuit Court
LC No. 01-006570-FH

Before: Markey, P.J., and Cavanagh and Saad, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial conviction for assaulting a prison employee, MCL 750.197c. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's conviction was based on his throwing a substance purported to be urine on a prison employee. On appeal, defendant asserts there was insufficient evidence to support his conviction because no chemical tests were performed to show that the substance was urine.

In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution, and determine whether any rational finder 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). The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

MCL 750.197c is violated when a person lawfully imprisoned in a place of confinement uses violence to assault an employee of the place of confinement. *People v Terry*, 217 Mich App 660, 661-662; 553 NW2d 23 (1996). In construing the statute, this Court has defined violence as any wrongful application of physical force against another person so as to harm or embarrass him. *Id.*; *People v Boyd*, 102 Mich App 112; 300 NW2d 760 (1980). In *Boyd*, the Court found that the throwing of a liquid alleged to be urine on a prison employee was an act of violence that supported a conviction under the statute. In *Terry*, the Court found that the act of spitting on a prison employee was an act of violence under the statute.

There was sufficient evidence to support defendant's conviction. The prosecution did not have to prove that the substance was urine in order to establish that defendant committed an assault. If it were a necessary element, evidence that the substance looked and smelled like urine, and defendant referred to it as urine, was sufficient to allow a rational finder of fact to conclude that the substance was urine.

Affirmed.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Henry William Saad