

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN LEE BOWDEN,

Defendant-Appellant.

UNPUBLISHED

October 17, 2006

No. 264007

LC No. 05-002096-01

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted on three counts of felonious assault, MCL 750.82. Defendant was sentenced to two years' probation with the first ten months in jail and work release. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's first issue on appeal is that there was insufficient evidence to support his convictions on three counts of felonious assault. We disagree. In reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). Where a claim of insufficient evidence follows a bench trial, this Court reviews the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

Defendant argues there was no physical evidence of either a gun or an assault with any other deadly weapon. The police did not recover any firearms when they searched defendant's home nor does the record show that the trier of fact was convinced beyond a reasonable doubt that defendant committed an assault with a dangerous weapon. The trier of fact stated, "All I know is that these people were assaulted," and felonious assault requires a dangerous weapon, "[but] you don't need a gun to commit a felonious assault."

The required 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 fear or apprehension of an immediate battery. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Circumstantial evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). To commit an assault one must show either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension

of receiving an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). “The character of a dangerous weapon attaches by adoption when the instrumentality is applied to use against another in furtherance of an assault.” *People v Goolsby*, 284 Mich 375, 378; 279 NW 867 (1938). Defendant’s conduct and the surrounding circumstances are sufficient to prove defendant’s intent. *People v Lawton*, 196 Mich App 341, 350; 492 NW2d 810 (1992). The trier of fact must determine the credibility of the witnesses and draw inferences from the evidence. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002); *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004).

There is sufficient evidence to prove defendant committed assault with a dangerous weapon against the three victims. Defendant’s first victim, Ramon Guzman, testified that defendant pointed the pistol at him and said, “Motherf---r I’ll kill you.” Guzman knew that it was a pistol because he had seen guns before. Guzman’s uncle, Joseph Giasson, stated that he saw defendant pointing the pistol at Guzman. Joseph also stated that defendant pointed the gun at Joseph’s head repeatedly threatening to kill him and Guzman. Defendant held the pistol so close to Joseph that it hit Joseph’s nose and cut his face. Guzman’s other uncle, Donald Giasson, stated that he heard defendant say to the men, “I’ll kill you,” and that when Donald arrived in the alley, he saw defendant holding the pistol to Joseph’s forehead. Donald described the pistol as a big black handgun. Further, Donald testified that defendant walked up to him with the pistol in his hand and threatened him.

Defendant’s yelling repeated death threats at the men indicates that defendant intended to either injure the men or place them in reasonable fear or apprehension of an immediate battery. Thus, defendant committed an assault against the three victims. The police failed to recover any guns during their search of defendant’s home. But the trier of fact concluded that the victims testified truthfully that defendant had assaulted them with “something.” It is not for this Court to question the credibility of the witnesses. *Hardiman, supra*, p 421. Whether defendant used a pistol or another item is insignificant, as the item took on the character of a dangerous weapon when defendant used it in furtherance of the assault. The evidence is sufficient to sustain defendant’s convictions on three counts of felonious assault.

Defendant’s second issue on appeal is that the trial judge failed to provide findings of fact and conclusions of law as required by MCR 6.403. Specifically, defendant claims that the trial judge needed to specify the precise object defendant used in the assault to make sufficient findings of fact under MCR 6.403 and MCR 2.517. In a bench trial, the court must find sufficient facts and state separately its conclusions of law as to contested matters. MCR 2.517(A)(1), (A)(2); MCR 6.403; *People v Feldman*, 181 Mich App 523, 534; 449 NW2d 692 (1989). A trial court’s factual findings are sufficient when it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 148 (1995). Such findings of fact and conclusions of law need be only brief and pertinent without over elaboration of detail or particularization of facts. *People v Lewis*, 168 Mich App 255, 268; 423 NW2d 637 (1988).

The statute for felonious assault requires that defendant possess a “dangerous weapon.” MCL 750.82. Under Michigan case law, the character of a dangerous weapon attaches when the instrumentality is applied to use against another in furtherance of an assault. *Goolsby, supra*, p 378. At the conclusion of defendant’s bench trial, the judge stated, “these people were assaulted with something . . . they were telling the truth . . . I don’t have a gun to rely on. You can assault

somebody with a crowbar, you can assault them with a gun that's not a gun. Anything of that sort . . . I have the benefit of the doubt, since the police did a search and didn't find a gun. But you don't need a gun to commit a felonious assault."

Although defendant argues that the trial judge needed to specify the precise object defendant used in furtherance of the assault, neither the statute, MCL 750.82, nor case law requires such a finding. Defendant made death threats while pointing the alleged pistol at Guzman and Joseph. Defendant also threatened Donald as he walked toward Donald with the pistol in his hand. Guzman admitted that defendant's crazy behavior scared him and Donald stated that when he backed up the car he feared defendant would shoot him. The evidence establishes that defendant used a dangerous weapon against the three victims because such weapon was used in furtherance of the assault. Although the trial court's findings were brief, the court was aware of the issues and correctly applied the law to conclude that defendant committed an assault with a dangerous against the three victims.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens