

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARY MICHAEL-JAMES TAYLOR,

Defendant-Appellant.

UNPUBLISHED

February 22, 2007

No. 265242

Wayne Circuit Court

LC No. 05-002751-01

Before: O’Connell, P.J., and Saad and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to one year probation for the felonious assault conviction and two years’ imprisonment for the felony-firearm conviction. We affirm.

Defendant argues that his convictions lacked evidentiary support. “[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a 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 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).

The complainant and some of his friends were outside a club when defendant and his friends started harassing them. The evidence indicated that one of the members of defendant’s group threw a metal bolt at complainant, nearly hitting him. Defendant’s group then went to an F150 truck and the other group climbed into a Chevy Blazer. After the occupants from each vehicle exchanged heated words as their vehicles passed in the parking lot, the driver of the Blazer found a space and parked it again. The complainant testified that he put the bolt in his back pocket, and, following his friend’s lead, he climbed out of the Blazer and tried to take off his shirt while walking toward defendant’s group. Defendant, too, had followed a friend out of the parked truck and was walking toward complainant’s group. He continued to walk toward the group when he suddenly pulled a handgun, cocked it, pointed it at the complainant and his friend, and told them “you don’t want none of this.” Defendant later testified that he was reacting to complainant tugging at his shirt, perhaps trying to draw a weapon, and another

individual in the group who was grabbing at his waistband. Defendant admits that he did not see a weapon. Another one of complainant's friends testified that defendant threatened to "blow" their "brains out." The complainant testified that he feared for his life.

Fortunately, police officers were nearby conducting an undercover operation, and they immediately reacted to the situation and told defendant to drop his weapon. Defendant complied, and the officers searched the other two members of defendant's party and the apparent leader of complainant's party. Defendant's handgun was the only firearm found at the scene.

Therefore, the evidence indicated that defendant pointed a handgun at the complainant and threatened him with it. Viewing this evidence in a light most favorable to the prosecution, the prosecutor presented sufficient evidence of defendant's intent to place the victim in fear, and the trial court correctly concluded that the intent element of felonious assault was proven beyond a reasonable doubt. Although defendant testified that he pointed his finger, not his firearm, at the approaching men, two of the members of complainant's group and two of the plain-clothes police officers coincidentally positioned nearby, stated that defendant pointed the pistol in the direction of the approaching group. The evidence also persuasively established that defendant was walking toward the group just before he pointed his handgun. Therefore, the trial court's finding that defendant intended to use the handgun to instill fear in the approaching men was not clear error and did not run contrary to the great weight of the evidence. Because the felonious assault was committed with a handgun, it follows that defendant's conviction for felony-firearm also comports with the great weight of the evidence. Defendant's convictions had ample evidentiary support, and the trial court did not commit clear error in finding defendant guilty beyond a reasonable doubt.

In addition to challenging his felonious assault and felony-firearm convictions, defendant argues that the trial court clearly erred by rejecting his self-defense claim, and that the trial court's rejection of the claim ran contrary to the great weight of the evidence. Generally, a defendant acts in lawful self-defense if the defendant honestly and reasonably believes that an assailant is about to inflict serious bodily harm or death, and the defendant is not the initial aggressor or the first to resort to deadly force in a mutual affray. *People v Riddle*, 467 Mich 116, 119-120; 649 NW2d 30 (2002); *Detroit v Smith*, 235 Mich App 235, 238; 597 NW2d 247 (1999). In this case, the prosecutor presented strong evidence that defendant and his friends initiated the harassment and threw a bolt at the other group. The prosecutor also presented undisputed evidence that defendant was the only man with a lethal weapon, and immediately before he drew the weapon, he was walking toward the other group expecting a physical altercation. Although defendant argued that members of the other group were pulling at their shirts and reaching in their waistbands, no other weapon was drawn and none was found at the scene. In fact, the record reflects that defendant pointed the weapon directly at the head of the foremost member of the other group, and that individual was not alleged to have made any "furtive" gestures at all.

Under the circumstances, the evidence did not demonstrate that defendant acted out of a sincere belief that he was in danger of an immediate battery, but at most out of fear that someone from the other group might produce a dangerous weapon. Furthermore, defendant admitted that he expected to engage in a physical altercation while armed with lethal firepower. Whether defendant is classified as the aggressor or the circumstances suggest a mere mutual affray, the law does not allow the escalation of a conflict to deadly combat on the basis of unfounded and

unreasonable speculation and distrust between combatants. Instead, the justification of self-defense protects those who are assaulted with deadly force by an individual who is not justified to employ it. See *Riddle, supra*. To hold otherwise would irrationally absolve the gunfighter who draws and shoots first on the faulty basis that he reasonably suspected that the other gunfighter might get the drop on him. This is not the law. Of course, if defendant was dutifully enforcing the law rather than trying to flout it by initiating a drunken back-alley rumble, then the circumstances might indicate a level of discretionary authority and a different set of justifications. Under these circumstances, however, defendant was not acting under the color of law and has not demonstrated any reason to afford him special consideration. Therefore, the facts do not suggest that defendant acted in self-defense, and the trial court did not clearly err by finding that self-defense did not apply.

Moreover, defendant relies heavily on his own testimony but admits that he had been drinking and was “buzzed” at the time of the assault. He testified that, armed with a handgun, he followed his friend out of the truck knowing he was about to engage in a brawl. The testimony of the complainant and his friends strongly indicated that defendant did not react to fear of serious bodily injury, but a desire to frighten, intimidate, and bully the members of the other group. Therefore, defendant’s credibility regarding his “honest and reasonable” fears was substantially eroded, and the trial court was free to disbelieve defendant’s claim that he thought he was in serious danger from the furtive gestures made by the oncoming group. *People v McCray*, 245 Mich App 631, 638; 630 NW2d 633 (2001). Under these circumstances, the trial court did not clearly err by finding that the prosecutor refuted defendant’s self defense claim beyond a reasonable doubt, MCR 2.613(C), and the evidence did not “preponderate[] so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand.” *McCray, supra* at 637.

Defendant also argues that the trial court erred by excluding testimony of two witnesses regarding defendant’s training as a reserve sheriff. Evidentiary issues are reviewed for abuse of discretion. *People v Sabin (After Remand)*, 463 Mich 43, 60; 614 NW2d 888 (2000). In this case, defendant claimed self-defense and argued that, on the basis of his training as a reserve sheriff, he reasonably believed that he was in danger because one of the men he was confronting was reaching behind his waistband while another tugged at his shirt. Both excluded witnesses allegedly would have testified regarding defendant’s training, and defendant argued that his training led him to believe, honestly and reasonably, that he was in danger. Defendant claims that this evidence was highly relevant to his self-defense issue. However, the trial court did not rule that the evidence was irrelevant; it simply found that the expert testimony would not have assisted it in making its decision. See MRE 702. The issue of defendant’s honest and reasonable fear distilled down to a credibility contest, and defendant had already testified about his training and alleged reliance on that training. Under the circumstances, the testimony would have been largely duplicative, and the trial court did not abuse its discretion by holding that expert testimony would not be helpful for the resolution of the issue. *Id.*

Affirmed.

/s/ Peter D. O’Connell
/s/ Henry William Saad
/s/ Michael J. Talbot