

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHANELLE KATHERINE FUNCHES,

Defendant-Appellant.

UNPUBLISHED

October 18, 2016

No. 328116

Wayne Circuit Court

LC No. 14-010446-FH

Before: GADOLA, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial conviction of assault with a dangerous weapon (felonious assault), MCL 750.82. The trial court sentenced defendant to two years' probation. We affirm.

The defendant does not dispute that on the day of the incident she and Cordell Mabins had two arguments. The first occurred at the home of Cordell whose wife is the defendant's niece. The second argument occurred at the defendant's home to which the defendant drove after the initial argument. The defendant does not dispute that the confrontation at her home escalated but challenges the degree of escalation. The record contains competent testimony from Lakisha Mabins, Cordell's wife, that at one point the defendant attempted to slash Cordell's vehicle tires, but was prevented from doing so by other family members. There is also testimony in the record from Cordell that the defendant threatened him while wielding a knife but that other family members interceded and prevented her from fully ascending the stairway to reach him.

Defendant argues that there was insufficient evidence to support her conviction. We disagree.

When reviewing a challenge to the sufficiency of the evidence, this Court reviews the record de novo. *People v Gaines*, 306 Mich App 289, 296; 856 NW2d 222 (2014). This Court reviews the evidence in the light most favorable to the prosecution to determine whether the trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *Id.* This Court will not interfere with the jury's determinations regarding the weight of the evidence and the credibility of the witnesses. *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008).

The elements of felonious assault are: (1) an assault; (2) with a dangerous weapon; and (3) the intent to injure or place the victim in reasonable apprehension of an immediate battery. *People v Nix*, 301 Mich App 195, 205; 836 NW2d 224 (2013). Circumstantial evidence and reasonable inferences arising from the evidence may be sufficient to prove the elements of a crime. *People v Kissner*, 292 Mich App 526, 534; 808 NW2d 522 (2011). Because defendant does not dispute the intent element of felonious assault, we will address only the first and second elements of that offense.

Defendant first argues that there is insufficient evidence to prove she assaulted Cordell. “An assault may be established by showing either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery.” *People v Starks*, 473 Mich 227, 234; 701 NW2d 136 (2005). Specifically, defendant argues that because two family members physically restrained defendant on the staircase, she did not have the present ability to commit a battery. However, defendant’s argument fails because a jury could find that defendant had the present ability to commit a battery by either throwing the knife or reaching Cordell at the top of the stairs in a matter of seconds.

In *People v Grant*, 211 Mich App 200, 202-203; 535 NW2d 581 (1995), this Court held that the defendant retained the present ability to commit a battery when he was six to seven feet away from the victim and “could have thrown or intended to throw the knife at [the victim] from that distance.” Here, as in *Grant*, if the jury believed Cordell’s testimony that defendant was on the stairs with the knife, defendant would have the present ability to throw the knife at Cordell. During the trial, Cordell said that defendant was “midway up the steps” and that the staircase totaled 10 to 12 steps. From that short distance, defendant could have easily thrown the knife up the five or six stairs where Cordell stood. Also, if defendant, already midway up the staircase, maneuvered past her two family members, defendant would have likely reached the top of the staircase within seconds. Therefore, a rational jury could find that defendant had the present ability to commit a battery either from throwing the knife or actually reaching the top of the stairs in a matter of seconds.

Defendant also argues that the jury could not have found reasonable apprehension because defendant did not have the present ability to commit a battery and Cordell never testified that he feared the defendant. Defendant posits that Cordell’s fear instead derived from flashbacks concerning past knife attacks against his family members. Additionally, defendant’s attorney at trial shed light on the fact that Cordell never sought cover behind a door of an adjoining room, further proving Cordell was not fearful.

Defendant’s arguments are misguided. When an issue involves an “apprehension-type assault,” the assailant’s “lack of actual ability to inflict the threatened harm is largely irrelevant and unnecessary, as long as the victim reasonably apprehends an imminent battery.” *People v Reeves*, 458 Mich 236, 244; 580 NW2d 433 (1998). Additionally, to prove that a victim reasonably apprehended an immediate battery, a jury need not find that the defendant’s actions caused the victim actual fear, even in apprehension-type criminal assault cases. *People v Davis*, 277 Mich App 676, 687-688; 747 NW2d 555, vacated in part on other grounds by 482 Mich 978 (2008). Instead, assault may be established when “circumstances indicate that an assailant, by overt conduct, causes the victim to reasonably believe that he will do what is threatened.”

Reeves, 458 Mich at 244. On the facts presented, viewed in the light most favorable to the prosecution, a jury could find that Cordell reasonably apprehended an immediate battery.

At trial, Cordell testified that defendant made numerous threats, yelling, “I’ll f*** you up,” “I’m going to kill you, b****,” and “I’m about to kill this motherf***er.” Moreover, the evidence showed that Cordell and defendant had already been involved in one altercation at the Mabins’ home and a second altercation at the top of the stairs of defendant’s home. Therefore, the jury could find that Cordell reasonably expected that defendant, with a knife in hand, would try to injure Cordell if they got into a third altercation that night. The fact that defendant was only a few feet away from Cordell when she was trying to ascend the staircase only strengthens the argument. Finally, Cordell called 911 and claimed he had no other way out of the home except to escape out of the second-story window. This evidence is sufficient for a rational juror to find that Cordell reasonably apprehended an immediate battery.

Subjective fear is not a necessary element to assault. *Davis*, 277 Mich App at 687-688. However, despite what defendant argues, there was also sufficient evidence for a jury to find that Cordell was actually fearful of defendant that night. Cordell’s flashbacks lend support to such a proposition. A rational jury could find that Cordell’s flashbacks were a direct result of defendant’s actions, i.e., wielding a knife and trying to attack him. Moreover, at trial, Cordell was asked if he was afraid when defendant tried to reach him at the top of the stairs, and he said, “Yes, very much.” Although Cordell did not seek cover in an adjacent room, this Court will not disturb the jury’s credibility determinations, *Unger*, 278 Mich App at 222, and there is testimony that supports a finding that Cordell was fearful of defendant. Therefore, the evidence presented at trial is sufficient for a jury to find beyond a reasonable doubt that defendant committed an assault.

Next, defendant argues that there was “doubt” that she had a dangerous weapon on the night of the incident. However, a knife is a listed weapon within the felonious assault statute, MCL 750.82(1),¹ and defendant does not dispute that if the jury found that she did have a knife such would satisfy the second element of felonious assault. Instead, defendant advances the position that an e-mailed statement she provided to Canton police “throws doubt on the presence of a weapon.” In defendant’s e-mail, defendant explained that she was never in possession of a steak knife and that the Canton home only contains butter knives. Additionally, defendant testified unequivocally at trial that she did not possess a knife or attack Cordell. However, despite defendant’s e-mail and her testimony at trial, there was sufficient evidence for a rational juror to find beyond a reasonable doubt that defendant possessed a knife.

¹ MCL 750.82(1) states:

Except as provided in subsection (2), a person who assaults another person with a gun, revolver, pistol, knife, iron bar, club, brass knuckles, or other dangerous weapon without intending to commit murder or to inflict great bodily harm less than murder is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

First, defendant's mother testified that her home has knives, and defendant later admitted at trial that there was at least one steak knife in the house. Second, Both Cordell and Lakisha testified that defendant possessed a knife. Although the jury heard the testimony of defendant and another witness, claiming that defendant was not in possession of a knife, that same witness testified that she was outside when the alleged knife incident occurred on the stairs. The jury weighed the credibility of the witnesses and their disputed testimony to determine whether defendant had a knife, and this Court will not disturb the jury's credibility determinations. *Unger*, 278 Mich App at 222. Viewed in a light most favorable to the prosecution, and deferring to the jury's credibility determinations, we find sufficient evidence existed to support defendant's felonious assault conviction beyond a reasonable doubt.

Affirmed.

/s/ Michael F. Gadola
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens