

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AARON J. JARDOT,

Defendant-Appellant.

UNPUBLISHED

April 19, 2002

No. 228789

Eaton Circuit Court

LC No. 99-020249-FH

Before: Cavanagh, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction, following a bench trial, of aggravated assault. MCL 750.81a. The trial court sentenced defendant to a term of eight days’ incarceration. We affirm.

Defendant was involved in a fight with Timothy Newsome outside defendant’s girl friend’s home. Newsome and defendant gave contradictory testimony regarding how the fight began and who threw the first punch, but there was no question that the fight ended with defendant kicking Newsome in the head and face while Newsome lay defenseless or unconscious on the ground. Newsome suffered serious injuries as a result of the fight, including several orbital fractures and severe facial swelling.

Defendant argues that the prosecution failed to disprove that defendant was acting in self-defense. We disagree.

Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt. *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993). Self-defense requires an honest and reasonable belief that the defendant’s life was in imminent danger or that there was a threat of serious bodily harm. *People v George*, 213 Mich App 632, 634-635; 540 NW2d 487 (1995), citing *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990). After reviewing the record, we find no evidence that defendant had an honest and reasonable belief that his life was in imminent danger or that there was a threat of serious bodily harm. Therefore, we conclude the prosecution had no duty to disprove self-defense.

Moreover, even if defendant acted in self-defense, the force he used was excessive. A defendant is not entitled to use any more force than necessary to defend himself. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993), citing *People v Deason*, 148 Mich App 27, 31;

384 NW2d 72 (1985). Where a person acts in self-defense, but with excessive force in a grossly negligent manner, the self-defense is negated. *In re Gillis*, 203 Mich App 320, 321-322; 512 NW2d 79 (1994); *Archer v Burton*, 91 Mich App 57, 61 n 2; 282 NW2d 833 (1979) (noting that in the absence of excessive force, a person cannot recover civil damages from the other participants in a voluntary fight).

Here, five disinterested witnesses watched defendant continue to kick Newsome in the head and face after Newsome was lying defenseless and possibly unconscious on the ground. Because defendant used more force than necessary to defend himself, self-defense is negated. Therefore, after viewing the evidence in the light most favorable to the prosecution, we conclude that the essential elements of the crime were proved beyond a reasonable doubt, including disproving defendant's evidence of self-defense. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000).

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Peter D. O'Connell