

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL NAPOLEON ROGERS,

Defendant-Appellant.

UNPUBLISHED

August 15, 2006

No. 260634

Calhoun Circuit Court

LC No. 04-002917-FH

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Defendant appeals by right his jury trial conviction for felonious assault, MCL 750.82.¹ He was sentenced to 270 days in jail, with credit for 165 days served. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

Defendant allegedly struck complainant with a beer bottle during an altercation that arose after complainant taunted defendant as she was driven by his home.² Complainant did not testify at trial; however, the driver of the van in which the assault occurred did testify about the circumstances of the assault, as did an employee and a customer of the store where the van was parked.

In reviewing a challenge to the sufficiency of the evidence, we must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748, amended 441 Mich 1201 (1992). Each element of the offense, including criminal intent, may be proven by circumstantial evidence and reasonable inferences arising from the evidence. *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993); *People v Lawton*, 196 Mich App 341, 350; 492 NW2d 810 (1992). “Because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient.” *People v McRunels*, 237 Mich App 168, 181; 603 NW2d

¹ Defendant was acquitted of the charged offense of assault with intent to commit great bodily harm less than murder, MCL 750.84.

² The complainant’s taunting apparently concerned her earlier assault upon defendant.

95 (1999). A prosecutor need not negate every reasonable theory of innocence, but must only prove his own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

“The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with 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).

Defendant maintains that the prosecutor failed to present sufficient evidence that he intended to injure complainant or to place her in reasonable apprehension of an immediate battery. He first appears to deny that he hit complainant with a beer bottle at all, but then argues that he did not have the intent necessary because his actions were taken in self-defense. In support of this argument, he stresses complainant’s earlier assault upon him.

We find defendant’s first contention without merit. Defendant admitted at trial that he struck complainant “about three times” with the beer bottle.

We also find that the prosecutor presented sufficient evidence to support the conviction, notwithstanding defendant’s claim of self-defense. Once a defendant introduces evidence of self-defense, the prosecution bears the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. *People v Fortson*, 202 Mich App 13, 19-20; 507 NW2d 763 (1993). A successful claim of self-defense requires that the defendant had an honest and reasonable belief that he was in danger, and use of only that force necessary to defend oneself. See *People v George*, 213 Mich App 632, 634-635; 540 NW2d 487 (1995), see also *People v Kemp*, 202 Mich App 318, 322-323; 508 NW2d 184 (1993). A defendant may not generally claim self-defense where he used excessive force or was the initial aggressor. *Kemp, supra*.

Issues concerning credibility and the weight to be given the witnesses’ testimony are appropriately left to the trier of fact. *Avant, supra* at 506. Here, the driver testified that defendant entered the van, which had been stopped outside an ice cream store, and began assaulting the complainant after attempting to pull her out of the van. This testimony was supported by that of a store employee and customer, both of whom provided accounts that supported a finding that complainant remained the victim throughout the incident. Viewing the evidence in a light most favorable to the prosecution, the testimony of these witnesses is to be believed over defendant’s testimony and, therefore, the prosecution met its burden of producing evidence sufficient to prove beyond a reasonable doubt that defendant did not act in self-defense.

Consequently, we conclude that the prosecution presented sufficient evidence from which a reasonable jury could find that defendant feloniously assaulted complainant.

Affirmed.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder