

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES DAVID WEAVER,

Defendant-Appellant.

UNPUBLISHED
February 11, 1997

No. 189372
Recorder's Court
LC No. 95-003879

Before: Jansen, P.J., and Young and R.I. Cooper,* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for felonious assault, MCL 750.82; MSA 28.277. Defendant was sentenced to serve six months to four years in prison. We affirm.

Defendant was convicted based upon an assault involving two security guards. Defendant argues on appeal that the evidence against him was insufficient for a rational trier of fact to reach the conclusion that he was guilty of felonious assault beyond a reasonable doubt because the prosecutor failed to establish that defendant was not intoxicated and did not act in self-defense. We disagree.

An appellate court reviewing the sufficiency of the evidence in a bench trial must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime charged were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270, 380 NW2d 11 (1985); *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). To convict a defendant of felonious assault, the prosecution must prove beyond a reasonable doubt that the defendant committed an assault, with a deadly weapon, and that the defendant intended to injure the victim or place the victim in reasonable fear or apprehension of an immediate battery. *People v Wardlaw*, 190 Mich App 318, 319; 475 NW2d 387 (1991).

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant argues for the first time on appeal that he was intoxicated and that the prosecutor failed to disprove this defense beyond a reasonable doubt. Ordinarily, issues first raised on appeal may not be considered for review. *In re Hildebrant*, 216 Mich App 384, 388; 548 NW2d 715 (1996); *People v Rollins*, 207 Mich App 465, 470-471; 525 NW2d 484 (1994). The only reference to intoxication at trial was defendant's statement that he had been drinking a little bit and that he guessed that he was intoxicated. Accordingly, we conclude that defendant did not introduce sufficient evidence to assert this defense and hence, decline to review this issue.

Defendant next argues that he acted in self-defense and that the prosecution produced insufficient evidence to prove beyond a reasonable doubt that his actions were unjustified. We disagree.

A defendant may not successfully assert a claim of self-defense where he or she was the aggressor. *People v Bright*, 50 Mich App 401, 406; 213 NW2d 279 (1973). In this case, whether defendant acted in self-defense was simply a question of credibility of the witnesses. Defendant claimed that the security guards were the aggressors in the altercation while the guards testified that defendant was the aggressor. The credibility of the witnesses is a matter for the trial judge when sitting without a jury and the finding of guilt by a trial judge in a criminal case will not be disturbed upon appeal unless the appellate court is satisfied that the guilt of the accused was not established beyond a reasonable doubt. *People v Geddes*, 301 Mich 258, 261; 3 NW2d 266 (1942); *People v Lapsley*, 26 Mich App 424; 182 NW2d 601 (1970). Because there was evidence that, if believed, established that defendant was the aggressor, the prosecutor presented sufficient evidence to refute defendant's claim of self-defense.

Affirmed.

/s/ Kathleen Jansen
/s/ Robert P. Young, Jr.
/s/ Richard I. Cooper