

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RENO ROBERTO SIMS,

Defendant-Appellant.

UNPUBLISHED

June 20, 1997

No. 186987

Recorder's Court

LC No. 94-011829

Before: MacKenzie, P.J., and Neff and Markey, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of two counts of felonious assault, MCL 750.82; MSA 28.278, and was sentenced to three years' probation. He appeals as of right. We affirm.

Defendant first contends that the trial court's findings of fact were clearly erroneous because they were based on testimony that was inherently inconsistent and implausible. We find no clear error. Milton Jones, his wife Sherrie, and his son Karlton all testified that defendant chased Milton Jones out of a building, pulled out a knife, and stabbed him. After Jones recovered from the stabbing enough to go back inside the building, defendant also went back inside and began hitting him with his fist. Milton and Karlton Jones both testified that Karlton attempted to intercede, but defendant hit him and knocked him to the ground. Another witness also saw defendant strike Milton Jones and Jones fall to the ground. The witnesses' testimony differed only in minor respects, such as how many feet from Jones' car the altercation took place, whether Jones managed to get up and run a few feet after being stabbed but before he again fell, and whether he was karate-kicked by defendant.

The trial court also heard the testimony of defendant, who stated that a drunken Milton Jones started the argument that resulted in his stabbing. Defendant further testified that he merely followed Jones out to the car in an effort to prevent him from driving in his drunken state, and drew his knife only when he was convinced that Jones was about to pull his knife out of his pocket. Defendant also stated that after the incident with Milton Jones, defendant went to the trunk of his own car in an effort to bluff

Jones into thinking that he had a gun, and observed Milton and Karlton Jones run into the recreation center, thereby precluding the possibility of a confrontation between defendant and Karlton Jones.

The trial court noted the discrepancies in the witnesses' versions of the incident, but found the prosecution's witnesses more credible. Reviewing the evidence in the context of the entire body of proofs and giving regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it, MCR 2.613(C), we decline to hold that the trial court clearly erred in its findings.

Defendant also contends that there was insufficient to sustain his convictions, and that the verdict was against the great weight of the evidence. Both of these arguments are premised on the assumption that the court's findings of fact were clearly erroneous. Because we conclude that there was no clear error in the court's findings, these arguments fail. Viewing the evidence in a light most favorable to the prosecution, 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; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Further, the verdict was not manifestly against the clear weight of the evidence or likely attributable to a cause outside the record. *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993).

Finally, defendant asserts that he was denied a fair trial due to the bias of the trial judge. Generally, we will not review allegations of error based on the conduct of the trial court in situations where no objection was made at the trial court level. *People v Collier*, 168 Mich App 687, 697; 425 NW2d 118 (1988). However, we may review for manifest injustice. *Id.*

We find no manifest injustice here. In stating a claim of judicial bias, the party who asserts partiality has a heavy burden of overcoming a presumption of impartiality. *Cain v Dep't of Corrections*, 451 Mich 470, 495, 497; 548 NW2d 210 (1996). Further, a claim of bias can never be based solely upon a decision made during the course of judicial proceedings. *People v Cortez*, 131 Mich App 316, 328; 346 NW2d 540 (1984). Here, the alleged biased remarks by the trial court were made in an effort to move the trial along, and in the court's findings of fact and comments on the credibility it gave to defendant's testimony. Because no actual bias was shown and the remarks were made during the course of the judicial proceedings, reversal is not required.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Janet T. Neff

/s/ Jane E. Markey