

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY J. GRIFFIN,

Defendant-Appellant.

UNPUBLISHED

February 10, 1998

No. 195570

Recorder's Court

LC No. 95-012400

Before: Gage, P.J., and Murphy and Reilly, JJ.

MEMORANDUM.

Defendant appeals by right his jury conviction of assault with intent to commit great bodily harm, MCL 750.84; MSA 28.278. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

All the issues raised concern the trial court's jury instructions. First, defendant contends the trial court erred in rejecting his request that the jury be instructed on self-defense. Defendant did not testify. He predicates his self-defense theory on the fact that, at the time of arrest, in addition to the knife used in the assault being found next to defendant in his automobile, a piece of pipe was found. Additionally, after arrest, defendant bore the indicia of facial abrasions and chipped teeth, which might have been the product of an initial assault by the complainant.

The problem with this theory is that it is entirely unsupported by the trial evidence. The victim was asked whether he or anyone associated with him had assaulted defendant with a pipe or even possessed a pipe; the answer was in the negative. The arresting officer and a second officer who came to his assistance testified that defendant's facial injuries occurred during arrest, because when initially ordered out of his vehicle defendant appeared to be reaching for a weapon. While the jury might have disbelieved the victim's and police officers' testimony in this regard, the untruthfulness of their testimony would not have established the truthfulness of an inverse factual proposition. *Boudeman v Arnold*, 200 Mich 162, 165; 166 NW 985 (1918). Only speculation, not evidence, supports the theory of self-defense, and the trial court therefore did not err in denying the requested instruction. *People v Walker*,

167 Mich App 377; 422 NW2d 8 (1988). That, after trial, defendant made statements which might support a claim of self-defense is irrelevant.

Defendant next contends that the trial court laid the groundwork for an improper compromise verdict by instructing the jury on the uncharged offense of assault with intent to murder. The record negates this contention. What the trial court did was inform the jury that a higher offense known as “assault with intent to murder” existed, and it elucidated the nature of that offense for the purpose of better defining the charged crime of assault with intent to commit great bodily harm. When the instructions are considered as a whole, this instruction was well calculated to assist the jury in better applying the law to the facts, and it created no possibility of an improper compromise. *People v McKinley*, 168 Mich App 496; 425 NW2d 460 (1988).

Finally, defendant contends that in instructing the jury that, if it believed complainant’s testimony about the severity of his injuries, the injuries as described would constitute great bodily harm, the trial court erred in allowing the jury to find great bodily harm without supporting expert medical evidence. This is by no means the basis of objections made at trial, which were likewise without merit and have now been abandoned. Without regard to issue preservation, however, while expert medical testimony might have been admissible on the issue, it was not necessary to the prosecution’s case, and the victim was perfectly competent to detail his own injuries to the trier of fact. *People v Nelson*, 168 Mich App 781, 791; 425 NW2d 225 (1988).

Affirmed.

/s/ Hilda R. Gage
/s/ William B. Murphy
/s/ Maureen Pulte Reilly