STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DORIO THORNTON,

Defendant-Appellant.

UNPUBLISHED
October 13, 1998

No. 199176
Recorder's Court
LC No. 95-012107

Before: Smolenski, P.J., and McDonald and Saad, JJ.

PER CURIAM.

A jury convicted defendant of felonious assault, MCL 750.82; MSA 28.277, and the court sentenced him to three years' probation. He appeals the conviction by right, and we affirm.

Defendant challenges the sufficiency of the evidence to establish felonious assault. He argues that the prosecution failed to prove beyond a reasonable doubt that defendant did not act in defense of another. We disagree. When considering the sufficiency of the evidence to support a conviction, this Court 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 Parcha*, 227 Mich App 236, 238-239; 575 NW2d 316 (1997). Reasonable inferences and circumstantial evidence may constitute satisfactory proof of the elements of the offense. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995)

The elements of felonious assault are "(1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery." *Parcha, supra*, 239. A jury is permitted to infer that a defendant intended the natural and probable consequences of his act. *In re Thurston*, 226 Mich App 205, 226 n 26; 574 NW2d 374 (1997). The requisite intent may be inferred from conduct as well as words. *Parcha, supra*, 239; *People v Mack*, 112 Mich App 605, 611; 317 NW2d 190 (1981).

Defendant admitted that he came up behind Danny Curvin, picked up a child's bicycle, and intentionally hit Curvin in the head with it. This evidence was sufficient for a rational trier of fact to find that the elements of felonious assault were proven beyond a reasonable doubt. However, a

person has the right to use force to defend himself. See *People v Heflin*, 434 Mich 482, 502-503, 456 NW2d 10 (1990). The right to self-defense includes the right to defend another. CJI2d 7.21; *People v Wright*, 25 Mich App 499, 503; 181 NW2d 649 (1970). 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). To have acted in lawful defense of another, defendant must show the following:

> When he acted, the defendant must have honestly and reasonably believed that he had to use force to protect another. If his belief was honest and reasonable, he could act at once to defend the other person, even if it turns out later that he was wrong about how much danger the other person was in. [CJI2d 7.22.]

Defendant introduced evidence that he acted in the defense of his girlfriend, Markita Rogers, because Curvin was threatening her and trying to hit her with a wheel lock. However, the prosecution presented evidence Markita was not in danger at the time defendant attacked Curvin. According to the prosecution's evidence, Markita was in her house with the door shut, and Curvin was walking away from the house, no longer carrying the wheel lock. Furthermore, one of defendant's witnesses testified that Curvin did not have the wheel lock in his hand and was merely exchanging words with Markita when defendant hit him with the bike The evidence was therefore sufficient for the jury to find that defendant did not honestly or reasonably believe that Markita was in imminent danger.

Defendant alternatively claims that the verdict was against the great weight of the evidence. We disagree. "A new trial based upon the weight of the evidence should be granted only where evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result." *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998).

The Michigan Supreme Court held in *Lemmon*, *supra*, that insofar as *People v Herbert*, 444 Mich 466, 476; 511 NW2d 654 (1993), permitted the trial judge to act as a "thirteenth juror" and authorized judges to grant new trial motions on the basis of a disagreement with juror assessment of credibility, *Herbert* was overruled. *Lemmon*, *supra*, 456 Mich 627. "A trial judge does not sit as the thirteenth juror in ruling on motions for a new trial and may grant a new trial only if the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand." *Id.* The Supreme Court went on to state that, "absent exceptional circumstances, issues of witness credibility are for the jury, and the trial court may not substitute its view of the credibility 'for the constitutionally guaranteed jury determination thereof.'" *Id.* at 642.

The evidence did not clearly weigh in defendants' favor. As discussed above, there was conflicting testimony regarding Curvin's conduct toward Markita at the time of the assault. The testimony presented a credibility contest regarding whether defendant could have honestly and reasonably believed that he had to use force to protect Markita. Resolving credibility questions is the exclusive province of the jury, even where the trial court would have reached a different

result. *People v DeLisle,* 202 Mich App 658, 662; 509 NW2d 885 (1993). The trial court properly denied defendant's motion for a new trial.

Affirmed.

/s/ Michael R. Smolenski
/s/ Gary R. McDonald
/s/ Henry William Saad