

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

KEITH BONNER,

Defendant-Appellant.

UNPUBLISHED

January 25, 2002

No. 217598

Wayne Circuit Court

Criminal Division

LC No. 98-004845

Before: Cooper, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Defendant was convicted following a bench trial of felonious assault, MCL 750.82, and sentenced to three years' probation, with the first year to be served on tether. He appeals as of right. We affirm.

First, defendant argues that the trial court erred in admitting the victim's statement to the police under the excited utterance exception to the hearsay rule because she had sufficient time after the alleged assault to contrive and misrepresent. We disagree. A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *People v Smith*, 456 Mich 543, 550; 581 NW2d 654 (1998).

An excited utterance is "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." MRE 803(2). Here, the circumstances surrounding the assault spanned a period of approximately an hour, and the statement was made within a few minutes after defendant released the victim. According to the responding police officer, the victim was visibly upset and crying, thus indicating that she had not regained her composure before talking to the police. The circumstances were sufficient to show that the victim was still under the influence of an overwhelming emotional condition when she made her statement. *Smith, supra* at 551; *People v Straight*, 430 Mich 418, 425; 424 NW2d 257 (1988). The trial court did not abuse its discretion in admitting the statement as an excited utterance.

Next, defendant argues that the evidence was insufficient to support his conviction. We disagree. The sufficiency of the evidence is to be evaluated by examining the evidence in the light most favorable to the prosecution. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985).

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.” *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1996). Here, the victim testified that defendant opened the door to the car where she was sitting and hit her on the hand and lower leg with a baseball bat. Although defendant asserts that the victim was not credible, the resolution of credibility disputes is within the exclusive province of the trier of fact. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). Here, it is apparent from the record that the trial court carefully considered the victim’s credibility and the existence of corroborating evidence before making its findings. Viewed in a light most favorable to the prosecution, the victim’s testimony was sufficient to find that defendant was guilty of felonious assault beyond a reasonable doubt.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Henry William Saad