

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHATEDA JOHNSON,

Defendant-Appellant.

UNPUBLISHED

September 17, 2002

No. 232550

Muskegon Circuit Court

LC No. 00-044847-FH

Before: Smolenski, P.J., and Neff and Bandstra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with a dangerous weapon, MCL 750.82, and sentenced to serve ninety days in jail and eighteen months' probation. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arises from an altercation wherein defendant was alleged to have stabbed and slashed the victim's face with either a box cutter or key.¹ On appeal, defendant first argues that she was denied the effective assistance of counsel because her trial counsel failed to impeach the victim with evidence of prior threats and assaults made by the victim against defendant. We disagree.

In order to establish a claim of ineffective assistance of counsel, a defendant must demonstrate that her attorney performed deficiently and that the deficiency likely affected the outcome of the case. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). With respect to a failure to call a witness or to present other evidence, such alleged deficiencies constitute ineffective assistance only when it deprives the defendant of a substantial defense. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994).

¹ The testimony offered at trial was conflicting with respect to the nature of the item used to inflict the victim's wounds. The trial court nonetheless correctly concluded that regardless of whether a box cutter or key was employed, the manner in which the object was used was sufficient to render either item a dangerous weapon for purposes of MCL 750.82. See *People v McCadney*, 111 Mich App 545, 549; 315 NW2d 175 (1981).

Here, defendant contends that the history of violence and hostility shown by the prior threats and assaults was “material” to her claim of self-defense because it provided an evidentiary basis for concluding that defendant had a reasonable apprehension of harm at the time she was confronted by the victim. However, inasmuch as defendant herself testified regarding the prior threats and assaults, it cannot be reasonably maintained that counsel’s failure to elicit similar testimony from the victim deprived defendant of her claim of self-defense. Moreover, the trial court rejected defendant’s self-defense claim not on the ground that defendant did not possess a reasonable apprehension of harm, but rather because it concluded that defendant failed to retreat, although capable of safely doing so, see *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000) (a defendant must retreat if retreat is safely possible), and also exceeded the force necessary to defend herself under the circumstances, see *People v Deason*, 148 Mich App 27, 31; 384 NW2d 72 (1985) (a defendant is entitled to use only that amount of force necessary to defend himself), abrogated on other grounds *People v Heflin*, 434 Mich 482, 503 n 16; 456 NW2d 10 (1990). Accordingly, even assuming that counsel was deficient in failing to elicit from the victim cumulative testimony concerning her prior threats and assaults against defendant, defendant is unable to show that such deficiency affected the outcome of the trial. *Carbin, supra*.

Defendant also argues that the evidence at trial was insufficient to support the trial court’s conclusion that defendant acted not in self-defense, but rather with the intent to assault the victim. Again, we disagree.

We review a challenge to the sufficiency of the evidence in a bench trial by considering the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000). Here, in order to convict defendant of the charged crime, the prosecution was required to produce evidence sufficient to establish that defendant assaulted the victim with a dangerous weapon and that, in doing so, she intended to either injure or place the victim in reasonable apprehension of an immediate battery. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Because defendant claimed her actions were in self-defense, the prosecutor was further required to produce evidence negating defendant’s claim that she acted solely to defend herself. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). After review of the evidence, we find that the prosecution was successful in meeting its burden in both respects.

The evidence at trial, when viewed in a light most favorable to the prosecution, indicates that after being asked to leave a store for instigating an argument with the victim, defendant, along with her friend, waited for the victim outside the store. When the victim appeared, defendant rushed at and struck the victim across the head and face with a sharp silver-colored object that she pulled from her purse, then fled the scene while laughing. Based on this evidence, we find the trial court’s conclusion that defendant intended to either injure or place the victim in apprehension of an immediate battery to be sufficiently supported by the record. *Avant, supra*. As noted by the trial court, the evidence offered at trial indicated that defendant had sufficient opportunity to leave the scene without incident, but instead chose “to get her licks in first.”

The evidence at trial similarly supports the trial court’s conclusion that, in stabbing and slashing the victim’s face, defendant exceeded the bounds of reasonably necessary force, and

was therefore precluded from successfully asserting a claim of self-defense. *Deason, supra*. According to the victim, she possessed no weapon at the time she was attacked by defendant and, as a result of the sudden nature of the attack, could do no more than back away while attempting to defend against defendant's blows. Although defendant offered evidence that she was surrounded by the victim and her friends, and claimed that she rushed the victim only to preempt what she feared was an imminent attack by these individuals on herself, this Court will not substitute its judgment for that of the trial court but will defer to the trial court's resolution of factual issues that involve the credibility of witnesses. *People v Martin*, 199 Mich App 124, 125; 501 NW2d 198 (1993). In any event, even accepting defendant's testimony as true, we find no error in the trial court's conclusion that defendant's actions exceeded the force necessary to defend against such an attack.

We affirm.

/s/ Michael R. Smolenski

/s/ Janet T. Neff

/s/ Richard A. Bandstra