STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 8, 2004
v	No. 246533 Oakland Circuit Court
JONATHAN DAVID RICHMOND, Defendant-Appellant.	LC No. 02-185854-FH

Before: Markey, P.J., and Wilder and Meter, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with a dangerous weapon, MCL 750.82. He was sentenced to two years probation, with the first six months to be served in jail unless he successfully completed boot camp. Defendant appeals by right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that there was insufficient evidence to convict him of felonious assault. We must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the elements were proved beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000).

The complainant testified that he pushed defendant away when defendant approached him "nose to nose", telling him to mind his own business, after he disputed defendant's claim that he had not taken his mother's car keys. According to complainant, defendant became irate and charged him with his head down. They then wrestled. While the complainant tried to restrain defendant, defendant tried to hit him. He let defendant go when he stopped hitting him. Complainant testified that defendant sat on the ground for a few minutes, and then went into the kitchen saying, "I'm going to kill you". He watched defendant pull out a drawer that fell to the floor, bend down and grab a 10 to 12 inch carving knife while he continued to say that he was going to kill the complainant. While defendant was kneeled over, complainant grabbed him from behind. Complainant testified that while he was holding defendant's arm, defendant was trying to bring the knife back to stab him, still saying that he was going to kill him. Eventually, the complainant disarmed the defendant by knocking the knife into the sink.

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 Davis, 216 Mich App 47, 53; 549 NW2d 1 (1996). Defendant asserts that the evidence showed that the complainant was the aggressor because he first pushed defendant and then he charged the defendant from behind while he was in a crouched position holding the knife. Defendant asserts that, at best, the evidence showed that he was fending off the complainant and that it was insufficient to show an attempt to commit a battery or an illegal act that caused fear of an immediate battery, or the requisite intent. Moreover, defendant argues that the complainant's testimony that he feared defendant was going to stab his leg cannot be credited because he previously said that the knife was pointed at the ground.

The evidence established that there was a lull between altercations, that the defendant picked up the knife in the kitchen after the lull, and that while the complainant was trying to disarm defendant, defendant pointed the knife at his leg and threatened to kill him. The intent to commit a felonious assault can be inferred from the defendant's actions and statements. *People v Williams*, 6 Mich App 412, 419; 149 NW2d 245 (1967). While the evidence would have permitted the jury to conclude that defendant was simply reacting to the complainant, it also allows for a reasonable inference that he was attempting to commit a battery and/or was threatening the complainant with the knife to cause him to fear an immediate battery. Further, it allowed for an inference that he intended to injure or create fear of an immediate injury. Determining what inferences can be fairly drawn from the evidence and the weight to accord them is up to the jury. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

Defendant asserts that the prosecutor also had to establish ability to commit the assault, apparent ability or a belief in the ability. Defendant notes that he was a foot shorter and thirty pounds lighter than the complainant, and that he never stood and turned to face him as an attacker would. Defendant maintains that he has been convicted for an assault that the complainant thought he *might* commit, and that this ability element was not established beyond a reasonable doubt. But, if defendant were attempting to stab the complainant's leg, an inference the evidence permits, apparent ability or a belief in his own ability was established. Thus, the evidence was sufficient.

Defendant next argues that the trial court erred in disallowing defendant's statement to the police on hearsay grounds. Defendant did not make an offer of proof below or argue, as he does on appeal, that the statement should have been allowed as a statement against interest. We decline to reach the merits of this argument since it could not amount to error requiring reversal. MRE 103(a).

We affirm.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter