

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ANGELA MARIE MARTINES,
Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

ANGELA MARIE MARTINES,

Respondent-Appellant.

UNPUBLISHED

October 12, 2004

No. 249589

Wayne Circuit Court

Family Division

LC No. 02-408267

Before: Fitzgerald, P.J., and Neff and Markey, JJ.

PER CURIAM.

Respondent, a juvenile, appeals as of right from a dispositional order adjudicating her guilty of assault and battery, MCL 750.81, and aggravated assault, MCL 750.81a. We affirm.

Respondent first argues that the trial court erred in finding her guilty of assault and battery and aggravated assault because the evidence showed that she acted in self-defense and defense of others. We disagree.

Respondent essentially challenges the sufficiency of the evidence. In determining whether sufficient evidence has been presented to sustain a conviction, an appellate court is required to view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

A claim of self-defense requires proof that the defendant acted in response to an assault. *Detroit v Smith*, 235 Mich App 235, 238; 597 NW2d 247 (1999). Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt. *People v Elkhaja*, 251 Mich App 417, 443; 651 NW2d 408 (2002), vacated in part on other grounds 467 Mich 916 (2003). Self-defense requires both an honest and reasonable belief that the defendant's life was in imminent danger or that there was a threat of serious bodily harm. *People v George*, 213 Mich App 632, 634-635; 540 NW2d 487 (1995). The defense is not available when a defendant is the aggressor unless she withdraws from any further encounter with the victim and communicates such withdrawal to the victim. *People v Kemp*, 202 Mich

App 318, 323; 508 NW2d 184 (1993). Self-defense applies to defense of others. *People v Kurr*, 253 Mich App 317, 321; 654 NW2d 651 (2002).

In this case, although respondent presented evidence that she acted in defense of herself and her sister, the prosecution's witnesses did not support respondent's version of events. In contrast to the testimony of respondent and another defense witness, none of the prosecution's witnesses testified that either of the complainants grabbed or slapped respondent's sister before respondent assaulted them. Rather, the prosecution's witnesses testified that it was respondent who initiated an unprovoked assault against Evelyn Martines, and then assaulted Everett Waterman when he came to Evelyn's aid. This testimony was sufficient to negate respondent's claim of self-defense and defense of others beyond a reasonable doubt. The trial court's decision was based on its evaluation of the witnesses' credibility and this Court defers to that determination. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002).

Respondent also argues that the trial court erred in ordering restitution in the amount of \$5,973.71. We find no merit to this issue. The record discloses that respondent expressly agreed to pay restitution in the amount of \$5,973.71 in exchange for the dismissal of additional charges. By expressly agreeing to this amount below, respondent waived review of this issue. *People v Adams*, 245 Mich App 226, 240; 627 NW2d 623 (2001). Further, even if we reviewed this issue for plain error, *People v Newton*, 257 Mich App 61, 68; 665 NW2d 504 (2003), appellate relief would not be warranted, because the record reflects that the prosecutor had receipts supporting the amount awarded.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Janet T. Neff
/s/ Jane E. Markey