

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRION LAYWONE BLAIR,

Defendant-Appellant.

UNPUBLISHED

May 8, 2008

No. 274719

Wayne Circuit Court

LC No. 06-006837-01

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felonious assault, MCL 750.82. Pursuant to MCL 769.11, defendant was sentenced as a third habitual offender to 18 months to four years in prison. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument. MCR 7.214(E).

This Court reviews challenges to the sufficiency of the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). Special deference is given to the jury's superior opportunity to evaluate a witness, and jury assessments regarding the weight and credibility of trial testimony will not be resolved anew on appeal. *People v Johnson*, 460 Mich 720, 731; 597 NW2d 73 (1999).

Defendant asserts that there was insufficient evidence to establish that he specifically intended to injure the victim. He also asserts that there was insufficient evidence to establish that he specifically intended to put the victim in reasonable fear of an immediate battery. Specifically, defendant contends that the prosecution relied strictly on speculative and unsupported testimony from the victim and from accompanying witnesses who did not actually see the fight between the victim and defendant.

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 fear or apprehension of an immediate battery. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992). Questions regarding the credibility of witnesses are for the trier of fact. *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991). We note that there were no eyewitnesses to the fight and that the jury in this case was presented with conflicting testimony from defendant and the

victim. However, the jury was also presented with testimony from witnesses who observed the victim's and defendant's condition following the fight in question. Despite the lack of eyewitness testimony, the jury assigned greater weight to the testimony of the other witnesses and the victim than it did to the testimony of defendant. Such jury determinations regarding the weight and credibility of the testimony will not be resolved anew on appeal. *Johnson, supra* at 731. Viewed in a light most favorable to the prosecution, there was sufficient evidence presented from which a rational jury could have concluded that defendant specifically intended to injure the victim or to put the victim in reasonable fear of an immediate battery.

Defendant also argues that the prosecution failed to prove beyond a reasonable doubt that he did not act in self-defense. MCL 780.972(2) provides that an individual who honestly and reasonably believes that the use of force other than deadly force is necessary to defend himself or herself or another individual from the imminent unlawful use of force by another individual may use other than deadly force. The jury in this case was presented with all the testimony and circumstantial evidence regarding defendant's actions and the apparent threatened danger. "It is the jury's task to weigh the evidence and decide which testimony to believe." *People v Jones*, 115 Mich App 543, 553; 321 NW 2d 723 (1982). A prosecutor need not negate every reasonable theory consistent with innocence, but must prove the elements of the crime beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Despite defendant's claim of self-defense, the jury concluded that defendant's use of force was unlawful and unnecessary given the circumstances surrounding the fight with the victim. We defer to this determination, which was based on the evidence presented at trial.

Lastly, defendant argues that it is entirely plausible that someone else may have caused the victim's head injuries. This issue was not raised at trial and there is nothing in the trial transcripts to indicate that another person may have caused the victim's injuries.

Viewed in the light most favorable to the prosecution, the evidence presented was sufficient to allow a rational jury to conclude beyond a reasonable doubt that defendant feloniously assaulted the victim, MCL 750.82.

Affirmed.

/s/ Helene N. White
/s/ Joel P. Hoekstra
/s/ Michael R. Smolenski