STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 23, 2012
v	No. 307162 Eaton Circuit Court
ANTHONY LAMAR BONNER, Defendant-Appellant.	LC No. 11-020244-FH

Before: K. F. KELLY, P.J., and MARKEY and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of three counts of felonious assault, MCL 750.82. He was sentenced, as a habitual offender third, MCL 769.11, to serve concurrent terms three years' probation for each conviction, with the first year to be served in jail, and given credit for 115 days already served. Because double jeopardy principles were not violated and because sufficient evidence was presented to support defendant's conviction, we affirm.

This case arises out of an incident in which three individuals were hospitalized after being severely beaten. The prosecution presented evidence, in the form of multiple eyewitnesses, that defendant became embroiled in an argument with one of the individuals, which led to his pushing and striking her. A fight soon broke out, which culminated in defendant entering his nephews' home, obtaining a pistol, and beating the three individuals with that weapon.

Two of defendant's nephews testified at trial. Both stated that defendant neither entered the home nor ever possessed a pistol during the altercation. Additionally, both testified that defendant was attacked by the three individuals in question, and that he appeared to use physical force only to defend himself from the attackers.

Defendant testified that he was inside his nephews' home when the alleged victims knocked on its door. He stated that he went outside, where they attacked him without provocation. Defendant testified that he did not touch any of the individuals until after he was attacked. He also testified that he "never had a gun, never owned a gun, never possessed a gun ever." Despite defendant's testimony, the jury convicted him of three counts of felonious assault.

On appeal, defendant first argues that the instant prosecution deprived him of his Fifth Amendment right to be free from double jeopardy. We disagree.

A double jeopardy challenge presents a question of constitutional law, calling for review de novo. *People v Smith*, 478 Mich 292, 298; 733 NW2d 351 (2007). Here, defendant asserts that double jeopardy was violated because prior to being convicted in Eaton County of the charges at issue, he was arraigned on the exact same charges in Ingham County, and Ingham County dismissed the charges against him. The location of the incident was apparently within Eaton County, but less than a mile from the Ingham County border. Defendant, however, has failed to provide any evidence regarding the existence of the alleged earlier arraignment. "We cannot analyze what defendant has not presented." *People v Waclawski*, 286 Mich App 634, 679; 780 NW2d 321 (2009). Further, a party's mere assertion that the party's rights were violated, unaccompanied by record citations, cogent argument, or supporting authority, is insufficient to present an issue for consideration by this Court. MCR 7.212(C)(7); *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003). In this case, defendant has failed to provide any support whatsoever to his assertion that he was arraigned earlier on the charges here at issue. As such, defendant's argument must fail.

Further, even if the alleged arraignment had occurred, defendant's double jeopardy challenge still fails. The Fifth Amendment of the United States Constitution provides, in pertinent part, that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb . . . " US Const, Am V. Similarly, the Michigan Constitution provides that "[n]o person shall be subject for the same offense to be twice put in jeopardy." Const 1963, art 1, § 15. In *People v Nutt*, 469 Mich 565; 677 NW2d 1 (2004), our Supreme Court held that "[t]he prohibition against double jeopardy provides three related protections: (1) it protects against a second prosecution for the same offense after acquittal; (2) it protects against a second prosecution for the same offense after conviction; and (3) it protects against multiple punishments for the same offense." *Id.* at 574. An "acquittal" is defined as "a resolution, correct or not, of some or all of the factual elements of the offense charged." *United States v Martin Linen Supply Co*, 430 US 564, 571; 97 S Ct 1349; 51 L Ed 2d 642 (1977).

A prosecutor's dismissal of charges is not equivalent to a resolution of some of the factual elements of the offense charged. Thus, double jeopardy is not implicated. Defendant's assertion that the dismissal of charges in Ingham County bars subsequent prosecution of defendant for the same charges is inapt. While defendant's brief on appeal asserts that a ruling of an Ingham Circuit judge served as a resolution of at least some of elements of the offense charged, this assertion is contradicted by defendant's own account of the alleged arraignment, according to which the prosecution voluntarily dismissed the charges. Because the prosecutor voluntarily dismissed the charges, there was no resolution of the factual elements for the offense charged that could have served as an acquittal.

Defendant next asserts that he acted in self-defense, such that his convictions must be reversed. Essentially, defendant raises a challenge to the sufficiency of the evidence.

Questions regarding sufficiency of evidence are reviewed de novo. *People v Osby*, 291 Mich App 412, 415; 804 NW2d 903 (2011). "Taking the evidence in the light most favorable to the prosecution, the question on appeal is whether a rational trier of fact could find the defendant

guilty beyond a reasonable doubt." *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002).

Upon reviewing the record in a light most favorable to the prosecution, we conclude that the evidence was sufficient to support defendant's convictions. In the case at hand, the victims consistently testified that while one of the females approached defendant to confront him about derogatory text messages he had been sending, defendant immediately struck her, then continued to assault her and the other two victims. Another witness, not involved in the affray, testified that defendant was the aggressor in the situation and beat the three victims with a pistol. While there was conflicting testimony as well, the jury obviously determined that the testimony offered by the prosecution was more credible than what was offered by the defense, and we refrain from encroaching upon that credibility determination. *Hardiman*, 466 Mich at 431. "Jurors determine the weight of the evidence; we do not." *Id*. Based upon the evidence, the jury reasonably concluded that defendant assaulted the three victims and was not acting in self-defense.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Jane E. Markey
/s/ Deborah A. Servitto