

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANA L. GRAHAM,

Defendant-Appellant.

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UNPUBLISHED

May 26, 1998

No. 194262

Recorder's Court

LC No. 95-009997

Before: Sawyer, P.J., and Kelly and Smolenski, JJ.

PER CURIAM.

Defendant was originally charged with felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Following a one-day bench trial, defendant was convicted of felonious assault. Defendant was sentenced to one to four years in prison. He now appeals as of right. We affirm.

Defendant's conviction arose from an altercation between defendant and complainant at the home in which both were residing, during which defendant sprayed complainant with mace. Defendant argues on appeal that his conviction was against the great weight of the evidence because the prosecutor failed to rebut his claim of self-defense beyond a reasonable doubt. We disagree.

When reviewing a claim that the verdict is against the great weight of the evidence, this Court must review the entire body of proofs. *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993). A new trial should be granted based on a finding that a verdict was against the great weight of the evidence only where the evidence preponderates so heavily against the verdict that a miscarriage of justice would result if the verdict were allowed to stand. *People v Lemmon*, 456 Mich \_\_; \_\_ NW2d \_\_ (Docket No. 105850, dec'd 3/24/98), slip op at 2. The issue of credibility of the witnesses is implicit in determining a great weight of the evidence question, *id.* at 16, and conflicting testimony is not a sufficient ground for granting a new trial. *Id.* at 27. Given the trial court's unique opportunity to assess the testimony and demeanor of the witnesses, this Court will defer to the trial court's determinations concerning the credibility of the witnesses.

Felonious assault involves "(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). A defendant may act in lawful self-defense if he honestly and reasonably believes that he is in imminent danger of death or serious bodily harm. *People v Heflin*, 434 Mich 482, 502-503; 456 NW2d 10 (1990). However, the defendant may not use force beyond that necessary to protect himself and he must not be the initial aggressor. *Id.* Once the defendant introduces evidence of self-defense, the burden shifts to the prosecutor, who must disprove that defendant acted in self-defense beyond a reasonable doubt. *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

Considering the entire body of proofs presented at trial, the court's conclusion that the prosecution had proven the elements of felonious assault and disproven defendant's claim of self-defense beyond a reasonable doubt was not against the great weight of the evidence. In this case, defendant testified that he was afraid of complainant because she had previously attacked and hit him and that he was simply defending himself from another attack by the complainant, who was armed with a knife and a pot of boiling water. Complainant denied any previous attacks. Complainant testified that she did not threaten defendant with the knife or water, but rather was carrying the knife because she had been using it to cut up vegetables. Furthermore, she had picked up the pot of boiling water to throw at defendant if he attempted to hit her as she left the house, and was, according to defendant, standing two rooms away from him when he sprayed the mace at her. This evidence indicates that defendant's belief that he was in danger of imminent bodily harm was not honest or reasonable. Complainant also testified that defendant was blocking the door, holding a pipe of some sort, and raising the pipe up each time she attempted to leave and that during the preceding argument, he had thrown something at her. This evidence would support a finding by the court that defendant was the initial aggressor.

The trial judge found complainant's account of the events to be more credible than defendant's. Since the prosecution did present evidence that could, if believed, rebut a claim of self-defense beyond a reasonable doubt, defendant's conviction was not against the great weight of the evidence.

Affirmed.

/s/ David H. Sawyer

/s/ Michael J. Kelly

/s/ Michael R. Smolenski