

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICK DONALD ROJAS, JR.,

Defendant-Appellant.

UNPUBLISHED

December 28, 1999

No. 207281

Macomb Circuit Court

LC No. 96-002371 FH

Before: Smolenski, P.J., and Whitbeck and Zahra, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of felonious assault, MCL 750.82; MSA 28.277, for which he was subsequently sentenced to two years' probation. He appeals of right. We affirm.

First, defendant claims the evidence was insufficient to support a conviction of felonious assault because the evidence failed to show that he intended to injure the victim. We disagree. In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 478, amended 441 Mich 1201 (1992). Questions of credibility and intent are left to the trier of fact to resolve. *People Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Intent may be inferred from all the facts and circumstances. *People v Safiedine*, 163 Mich App 25, 29-30; 414 NW2d 143 (1987).

The elements of felonious assault, MCL 750.82; MSA 28.277, 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 Wardlaw*, 190 Mich App 318, 319; 475 NW2d 387 (1991). As this Court observed in *Avant*, *supra* at 506, n 2, “[a] simple criminal assault is either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery.”

In this case, evidence was presented that defendant took a full bottle of beer and hit the victim first to the side of the face and then stabbed her in the head with the broken edge of the bottle. Viewed in a light most favorable to the prosecution, this evidence is sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant picked up the full bottle of beer in order to use it as a weapon against the victim, intending to injure her. Although defendant claims in his brief that he “swung his arm and struck the victim accidentally,” issues concerning defendant’s intent and credibility were for the trier of fact to resolve and this Court will not resolve those issues anew. *Id.* at 506.

Second, the trial court did not abuse its discretion in admitting the rebuttal testimony of Kelly Warf, because her testimony was relevant to the issue of the credibility of Kelly Capozzoli, a *res gestae* witness. *People v Figgures*, 451 Mich 390, 399; 547 NW2d 390 (1996).

Affirmed.

/s/ Michael R. Smolenski

/s/ William C. Whitbeck

/s/ Brian K. Zahra