

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN LEE SPICHER,

Defendant-Appellant.

UNPUBLISHED

February 18, 2000

No. 214999

Berrien Circuit Court

LC No. 98-410392-FH

Before: Fitzgerald, P.J., and Saad and Whitbeck, JJ.

PER CURIAM.

A jury convicted defendant Brian Lee Spicher of one count of assault with intent to do great bodily harm less than murder (“assault GBH”), MCL 750.84; MSA 28.279, but acquitted him of a second assault GBH charge. The trial court sentenced Spicher as an habitual offender, MCL 769.10, MSA 28.1082, to 4 ~~1~~to 15 years’ imprisonment with credit for forty-three days, and ordered him to pay \$60 to the Crime Victim Rights Fund within the first thirty days of release. The trial court also ordered him to pay restitution to the victim in the amount of \$11,108.92 for the victim’s medical bills and wage loss. Spicher now appeals his conviction as of right. We affirm.

I. Basic Facts

This case arises from a fight in the parking lot of the Daisy Mae lounge in Niles Township, which involved several individuals most of whom, including Spicher, had been drinking. The fight occurred under chaotic circumstances and the witness accounts varied significantly. It is fairly clear, however, that Tobin Workman was Spicher’s cohort at the time; Workman attacked a woman named Janet Schultz. When Patrick Eichel went to aid Schultz, Spicher attacked him with a heavy flashlight, bludgeoning Eichel on the head.

II. Sufficiency Of The Evidence

A. Standard Of Review

Spicher argues that the evidence was insufficient to support his conviction. Specifically, he contends that the prosecution failed to prove beyond a reasonable doubt that he possessed the specific intent to commit the crime. Viewing the evidence in a light most favorable to the prosecution, this Court must determine if 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).

B. Elements Of The Crime

In *People v Harrington*, 194 Mich App 424, 428; 487 NW2d 479 (1992), this Court stated that the crime of assault with intent to do great bodily harm less than murder consists of “an attempt or offer with force or violence to do corporal hurt to another (an assault)” and “an intent to do great bodily harm less than murder.” In order to be convicted of this crime, a defendant need not have intended the specific harm that was done to the victim; he need only have intended to cause great bodily harm. *People v Howard*, 179 Mich 478, 487-488; 146 NW 315 (1914). A defendant’s guilt may be proven by direct and circumstantial evidence and the reasonable inferences drawn therefrom, *People v Chandler*, 201 Mich App 611, 613; 506 NW2d 882 (1993), as well as the act, means, or the manner employed to commit the offense, *People v Leach*, 114 Mich App 732, 735; 319 NW2d 652 (1982). A defendant’s intent can also be inferred from his words. *People v Mack*, 112 Mich App 605, 611; 317 NW2d 190 (1981).

C. Spicher’s Intent

Here, Spicher’s intent could be inferred from the evidence that he yelled comments at Eichel in the parking lot and that he encouraged Workman to start a fight. The evidence that Spicher retrieved a flashlight from his Bronco, struck Eichel’s head repeatedly, which split his skin, knocked him to the ground, and splattered blood, quite obviously showed Spicher’s intent to commit great bodily harm. That Spicher and Workman proceeded to kick Eichel, though he had fallen to the ground, removes any doubt that the prosecutor might not have introduced sufficient evidence of Spicher’s intent.

Spicher also claims that there was insufficient proof of his specific intent to inflict great bodily harm on Eichel because he was acting in defense of Workman. Michigan law has long recognized that a person may act in self-defense or in defense of another. See *People v Wright*, 25 Mich App 499, 503; 181 NW2d 649 (1970), citing *People v Curtis*, 52 Mich 616, 620, 622; 18 NW 385 (1884). In *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990), Chief Justice Riley explained that using even deadly force is justifiable if the defendant “honestly and reasonably believes that his life is in imminent danger or that there is a threat of serious bodily harm.” However, the force used must be proportionate to the threat, and not excessive. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993). Although not precisely stated in the case law, it stands to reason that both of these requirements apply when a defendant claims that he or she was acting in defense of another because, in essence, the defense is no different than if the defendant was acting in self-defense. See *Curtis, supra* at 620 (“It was as much defendant’s right to inquire into their conduct and appearance *as if he had himself been the person assaulted* instead of his brother.”) (emphasis supplied).

Applying these rules to Spicher's argument that he justifiably acted in defense of Workman, there was ample testimony that Spicher used more than necessary force to defend Workman. *Kemp, supra*. In particular, Eichel was merely trying to get Workman off of Schultz when Spicher struck Eichel in the head with his flashlight. There was also evidence that Eichel attempted to communicate to Spicher that his group wanted to cease fighting and leave, but that Spicher refused to relent in his attack on Eichel, though Eichel fell to the ground.

To a large extent, Spicher's claim that there was insufficient evidence to support his conviction challenges the credibility of the testimony. However, credibility is a matter for the trier of fact. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). When all the direct and circumstantial evidence is viewed in the light most favorable to the prosecution, it is clear that there was sufficient evidence to support the conviction.

III. Jury Instructions

A. Preservation

Spicher argues that CJI2d 7.20, which states that the prosecutor has the burden to disprove self-defense, applies by analogy when a defendant acts in defense of another. Because he says that he acted in defense of Workman, Spicher claims that he was entitled to a similar defense and instruction to the jury and that the trial court erred by failing to adapt that instruction to the defense of another. Because he raised these arguments at trial, he preserved this issue for appeal. *People v Smith*, 80 Mich App 106, 113; 263 NW2d 306 (1977).

B. Standard of Review

We review jury instructions in their entirety to determine whether reversal is required. *People v Moldenhauer*, 210 Mich App 158, 159-160; 533 NW2d 9 (1995), citing *People v Caulley*, 197 Mich App 177, 184; 494 NW2d 853 (1992).

C. Legal Test And The Prosecutor's Burden On Appeal

"[F]ailure to give a requested instruction is error requiring reversal only if the requested instruction (1) is substantially correct, (2) was not substantially covered in the charge given to the jury, and (3) concerns an important point in the trial so that the failure to give it seriously impaired the defendant's ability to effectively present a given defense." *Moldenhauer, supra* at 159-160. Because this is a preserved, constitutional issue, and the prosecutor would benefit from the trial court's refusal to issue the instruction, the prosecutor has the burden of proving beyond a reasonable doubt that the trial court did not err. *People v Carines*, 460 Mich 750, 761, 774; 597 NW2d 130 (1999).

D. The Jury Instructions

Although CJI2d 7.20 refers only to self-defense, defense of another is substantially similar to self-defense under the eyes of the law, *Curtis, supra* at 620, and we believe that it should apply to this second theory. Because the facts of this case arguably show that Spicher acted in defense of

Workman, and CJI2d 7.20 accurately states the law and is not confusing, we see no good reason for the trial court to have refused to issue the instruction. Indeed, it would have fit well with the trial court's instructions on Spicher's theory of the case under CJI2d 7.22.

Nevertheless, concluding that an instruction would have been proper does not mean that the trial court's decision to refuse to issue the instruction requires reversing Spicher's conviction. *Moldenhauer*, *supra* at 159-160, clearly indicates that refusal to issue an instruction is not grounds for reversal if the other instructions actually given to the jury "covered" the substance of the disputed instruction. Consistent with this rule, as the prosecutor notes on appeal, Michigan appellate courts have held that a trial court's omission of the special instruction on the prosecutor's burden to disprove self-defense does not require reversal as long as there was a proper instruction on the general burden of proof and the defendant's theory of the case. See *People v Hunley*, 313 Mich 688, 694-695; 21 NW2d 923 (1946); *People v Asbury*, 257 Mich 297, 298; 241 NW 144 (1932); *People v Brown*, 34 Mich App 45; 190 NW2d 701 (1971). In other words, as long as the instructions do not implicitly or explicitly place a burden of proof on the defendant to prove self-defense, or in this context the defense of another, then the trial court has discharged its duty to instruct the jury on the law accurately and fairly. See *People v Statkiewicz*, 247 Mich 260, 266; 225 NW 540 (1929); *People v Pearson*, 13 Mich App 371, 377-378; 164 NW2d 568 (1968). Here, the trial court clearly and properly instructed the jury that (1) the prosecutor shouldered the burden of proving Spicher's guilt beyond a reasonable doubt, (2) defendant enjoyed the presumption of innocence, and (3) Spicher did not have any obligation to prove his innocence or produce evidence. These other instructions sufficiently informed the jury of the prosecutor's burden.

Furthermore, "[a]s a general rule, juries are presumed to follow their instructions," *People v Torres (On Remand)*, 222 Mich App 411, 423; 564 NW2d 149 (1997), "until the contrary is clearly shown," *People v Wolverton*, 227 Mich App 72, 77; 574 NW2d 703 (1997). There is no evidence that the jury failed to follow these otherwise proper statements on the law when deliberating on Spicher's guilt or innocence. Indeed, the jury was able to acquit Spicher of a separate assault GBH charge for allegedly assaulting a second victim in the same incident after hearing these very same instructions. Thus, we have no reason to believe that the jury disregarded the proper instructions on the prosecutor's burden of proof. In sum, the trial court's instructions to the jury adequately protected Spicher's rights and there was no error requiring reversal because the court refused Spicher's request for a CJI2d 7.20 instruction.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Henry William Saad

/s/ William C. Whitbeck