

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALEX THOMAS DZWONKOWSKI,

Defendant-Appellant.

UNPUBLISHED

June 30, 2000

No. 213139

Macomb Circuit Court

LC No. 97-001440-FC

Before: O'Connell, P.J., and Kelly and Whitbeck, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for assault with a dangerous weapon (felonious assault), MCL 750.82; MSA 28.277. The trial court sentenced defendant to serve two years' probation. This case arises out of a physical confrontation between defendant and complainant in defendant's residence. We affirm.

Defendant's only contention on appeal is that the trial court clearly erred in making certain factual findings because the prosecution failed to prove beyond a reasonable doubt that defendant did not act in self-defense. We disagree. We review a trial court's factual findings for clear error. *People v Everard*, 225 Mich App 455, 458; 571 NW2d 536 (1997); MCR 2.613(C). A trial court's factual findings are clearly erroneous when, on review of the whole record, we are left with a definite and firm conviction that the court made a mistake. *People v Hampton*, 237 Mich App 143, 148; 603 NW2d 270 (1999).

To claim self-defense, the evidence must show that (1) the defendant honestly and reasonably believed that he or she was in danger, (2) the danger feared was death or serious bodily harm, (3) the defendant's action appeared at the time to be immediately necessary, and (4) the defendant was not the initial aggressor. *People v Heflin*, 434 Mich 482, 502-503; 456 NW2d 10 (1990); *People v Garfield*, 166 Mich App 66, 79; 420 NW2d 124 (1988); *People v Deason*, 148 Mich App 27, 31; 384 NW2d 72 (1985). The trial court in this case found that defendant did not reasonably fear serious physical harm or death. The court further found that defendant was the initial aggressor in the confrontation.

Defendant argues that he had a mental illness that caused him to erroneously believe that he was under attack, and that any person suffering the same mental illness would have felt threatened by complainant's actions. As such, he urges us to conclude that the trial court should have found that he was acting in self-defense.

Defendant offered no evidence at trial that suggests to us that his belief was reasonable. Although defendant testified that complainant was holding "something in his hand," his belief was not reasonable because he could not discern whether complainant was going to attack him to the point of serious bodily harm or death. Moreover, the evidence supported the trial court's determination that defendant was the initial aggressor. Complainant testified that when he refused to purchase defendant's pills, defendant became agitated and threatened him. Defendant also admitted that he lifted a chair, held it over complainant's head, and threw it. Complainant testified that when he followed defendant into the kitchen to inquire why defendant was upset, defendant turned around, lunged toward complainant, and stabbed him without provocation.

We conclude that, even if defendant honestly feared that he was under attack,¹ the prosecution presented sufficient evidence to enable the trier of fact to find that defendant's fear was not reasonable, and that defendant was the initial aggressor. See *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993). Accordingly, the trial court did not clearly err in its factual findings.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael J. Kelly
/s/ William C. Whitbeck

¹ We also note that Dr. Abramsky testified that defendant's alleged mental illness was largely irrelevant to his actions, further diminishing defendant's credibility regarding whether he held an honest belief that he was under attack.