

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KERMIT MARCEL GIVAN,

Defendant-Appellant.

UNPUBLISHED
February 23, 2001

No. 220263
Oakland Circuit Court
LC No. 98-162989-FH

Before: Meter, P.J., and Neff and O'Connell, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for felonious assault, MCL 750.82; MSA 28.277. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant asserts that his conviction is against the great weight and sufficiency of the evidence. In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could find that the prosecutor established the essential elements of the crime beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999); *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Joseph*, 237 Mich App 18, 20; 601 NW2d 882 (1999).

The elements of felonious assault 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 immediate battery. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992). Viewed in a light most favorable to the prosecution, the victim's testimony established the elements of the crime. The evidence showed that defendant was the aggressor, expressed an intent to beat the victim, then struck him repeatedly with a baseball bat. A rational finder of fact could conclude that the elements of the crime were proven beyond a reasonable doubt. Further, our review of the record

did not support defendant's argument that the verdict was against the great weight of the evidence.

Affirmed.

/s/ Patrick M. Meter

/s/ Janet T. Neff

/s/ Peter D. O'Connell