

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDY B. HUBBLE,

Defendant-Appellant.

UNPUBLISHED

January 6, 2004

No. 243037

Wayne Circuit Court

LC No. 01-007904-01

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of two counts of felonious assault, MCL 750.82,¹ entered after a jury trial. We affirm.

Defendant was originally charged with two counts of assault with intent to commit murder, MCL 750.83, felonious assault, felon in possession of a firearm, and felony-firearm, second offense, in connection with a shooting at his home. The evidence showed that defendant fired a gun into a bedroom occupied by Tammy Townsend, his stepdaughter and niece,² and Townsend's two-year-old daughter Kayla. A bullet struck the wall approximately twelve inches above the mattress on which Townsend and Kayla slept. When Townsend awoke from the noise, defendant told her she was lucky that only her hearing was affected and the best witness was a dead witness. Defendant had been drinking heavily prior to the incident and at one point told his wife that he would kill her and Townsend. Defendant made a statement to the police in which he asserted that he fired the gun to get the attention of the occupants of the residence and to frighten them. Defendant maintained that, had he wanted to kill Townsend, he could have done so at any time.

¹ Defendant was also convicted of felon in possession of a firearm, MCL 750.224f, and possession of a weapon during the commission of a felony, second offense, MCL 750.227b, as well as a third count of felonious assault. Defendant does not specifically challenge these convictions on appeal.

² Townsend's father is defendant's brother.

The jury found defendant guilty of two counts of felonious assault as lesser included offenses of the charges of assault with intent to murder Townsend and Kayla, of felonious assault of his wife, and of felon in possession of a firearm and felony-firearm. The trial court sentenced defendant as a second habitual offender to concurrent terms of three to six years for felonious assault and four to seven and one-half years for felon in possession of a firearm, and to a consecutive term of five years for felony-firearm, second offense. Defendant received credit for 301 days.

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

The elements of felonious assault are: (1) an assault; (2) with a dangerous weapon; and (3) with the intent to place the victim in reasonable apprehension of an immediate battery. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). An assault is either an attempt to commit a battery or an unlawful act which places another person in reasonable apprehension of receiving an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). The intent to place the victim in fear of an immediate battery may be inferred from the circumstances. *People v Lawton*, 196 Mich App 341, 349-350; 492 NW2d 810 (1992).

Defendant argues that the evidence was insufficient to sustain his convictions of felonious assault of Townsend and Kayla. We disagree and affirm. The undisputed evidence established that defendant fired a gun into the wall of the room in which Townsend and Kayla were sleeping. Defendant told Townsend that she was lucky that only her hearing was harmed by the shot, and that the best witness was a dead witness. The jury was entitled to find from defendant's act of firing a gun into the wall twelve inches above the mattress that he attempted to commit a battery on Townsend and Kayla, and to infer that he intended to place them in fear of an immediate battery. *Davis, supra; Grant, supra; Lawton, supra*. Furthermore, defendant acknowledged that he fired the gun in order to frighten the occupants of the residence. The jury was entitled to find that defendant had the requisite intent to commit felonious assault notwithstanding the fact that he had been drinking heavily prior to the incident. *Milstead, supra*. The evidence, viewed in a light most favorable to the prosecution, supported defendant's convictions. *Wolfe, supra*.

Affirmed.

/s/ Pat M. Donofrio
/s/ Richard Allen Griffin
/s/ Kathleen Jansen