

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID CHARLES NOE,

Defendant-Appellant.

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UNPUBLISHED

August 10, 2004

No. 247000

Wayne Circuit Court

LC No. 02-011162-01

Before: Cavanagh, P.J. and Jansen and Saad, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for felonious assault, MCL 750.82, and domestic violence, MCL 750.81(2). Defendant was sentenced, as a habitual offender, fourth offense, MCL 769.12, to four to fifteen years in prison for the felonious assault conviction and to time served for the domestic violence conviction. We affirm.

Defendant argues there was insufficient evidence to sustain his convictions for felonious assault and domestic violence. We disagree.

This Court reviews an insufficient evidence claim de novo and in a light most favorable to the prosecutor to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). Conflicts that arise in the evidence will be decided in favor of the prosecution. *People v Fletcher*, 260 Mich App 531, 562; 679 NW2d 127 (2004) citing *People v Wolfe*, 440 Mich 508, 514-515, 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Felonious assault is defined as a simple assault exacerbated by the use of a weapon. *People v Jones*, 443 Mich 88, 89 n 2; 504 NW2d 158 (1993). 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 apprehension of an immediate battery.” *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999), citing *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). Domestic violence is a specific intent crime which is proved by establishing that the defendant and the victim are or at one time were married, dating, sharing a household or have a child in common, and the defendant either intended to batter the victim or the defendant's unlawful act placed the victim in reasonable apprehension of being battered. *People v Corbiere*, 220 Mich App 260, 266; 559 NW2d 666 (1996). “Criminal intent may be proven indirectly by

inference from the conduct of the accused and surrounding circumstances from which intent logically and reasonably follows.” *People v Lawton*, 196 Mich App 341, 350; 482 NW2d 810 (1992).

Ten witnesses testified they saw an altercation between the victim and defendant in Stanko’s Bar in the early morning hours of August 27, 2002. Two police officers testified they responded to the call that morning and apprehended defendant. The bar owner saw defendant try to kiss the victim and the victim resist. A bar patron saw defendant grab the victim’s shirt. Another patron saw defendant aim and throw a glass bottle at the victim’s head. A third bar patron saw the bottle hit the back of the victim’s head, ricochet into a framed picture of Gordie Howe, and shatter the glass covering the picture. The victim testified that she and defendant were on-again, off-again boyfriend and girlfriend and had lived together for five years. This evidence, when viewed in a light most favorable to the prosecution, is sufficient to show that defendant assaulted the victim with a weapon with the intent to injure or batter her and that defendant and the victim shared a household. Defendant argues that the required intent to injure is absent or, at the least, indiscernible from the evidence and testimony presented. However, the testimony that defendant, after being rebuffed by the victim, aimed and threw a bottle at her head with enough force to shatter a picture on ricochet, was sufficient to allow the jury to infer an intent to injure or batter the victim. See *Lawton*, *supra* at 350.

Defendant next argues that by reason of intoxication he lacked the specific intent to commit felonious assault and domestic violence. An officer testified that he smelled alcohol on defendant’s breath when defendant was apprehended. The victim testified defendant was drunk. Yet, “an instruction on the defense of intoxication is proper only if the facts of the case would allow the jury to conclude that the defendant's intoxication was so great as to render him incapable of forming the requisite intent.” *People v Gomez*, 229 Mich App 329, 332; 581 NW2d 289 (1998) citing *People v Mills*, 450 Mich 61; 537 NW2d 909 (1995), modified 450 Mich 1212 (1995). While an officer testified that he smelled alcohol on defendant’s breath, and the victim testified that defendant was drunk, defendant’s behavior at the bar indicated that he was not so intoxicated that he could not form the requisite intent. Testimony revealed that defendant could drive a car, jump over a fence while being pursued by police, and accurately throw a glass bottle at the victim and hit his target. Defendant was able to snatch a set of keys that dangled from the victim’s pocket, and could reach around a person and accurately hit another witness in the mouth. Therefore, there was sufficient evidence of the specific intent necessary to commit felonious assault and domestic violence.

Defendant further argues that the prosecution failed to show that the glass bottle was a dangerous weapon or was intended to be used as one for purposes of felonious assault. Michigan courts have held that “whether an object is a dangerous weapon depends upon the object itself and how it is used.” *People v Barkley*, 151 Mich App 234, 238; 390 NW2d 705 (1986). “A dangerous weapon within the meaning of the felonious assault statute . . . is one that is deadly or capable of inflicting serious injury.” *People v Norris*, 236 Mich App 411, 415; 600 NW2d 658 (1999) citing *People v Goolsby*, 284 Mich 375, 378; 279 NW 867 (1938). Michigan courts have considered glass bottles and many other objects to be dangerous weapons. *People v Sheets*, 138 Mich App 794, 799; 360 NW2d 301 (1984); *People v Riviera*, 120 Mich App 50, 55-56; 327 NW2d 386 (1982) (the Court determined that a wine bottle can be a dangerous weapon). Here, there was testimony that the glass bottle was thrown at the back of the victim’s head while she

stood on the opposite side of a bar with her back to defendant. This caused the victim to hunch over and bleed profusely. Because a glass bottle thrown forcefully at close range at the victim's head was capable of inflicting serious injury, there was sufficient evidence that the glass bottle, so adapted and employed, constituted a dangerous weapon.

Upon review de novo, viewed in a light that is most favorable to the prosecution, there was sufficient evidence to sustain defendant's convictions for felonious assault and domestic violence.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Kathleen Jansen  
/s/ Henry William Saad