STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 13, 2005
v	No. 257107 Muskegon Circuit Court
VIVIAN DIANE BROWN, Defendant-Appellant.	LC No. 04-050138-FH

Before: Whitbeck, C.J., and Bandstra and Markey, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of felonious assault, MCL 750.82. The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, to concurrent terms of forty-six months to fifteen years' imprisonment. Defendant appeals by right. We affirm.

Defendant's convictions arose from an altercation involving defendant, Freda Wood, and Donna Copeland during which defendant, at various points, held scissors, a knife, a screwdriver and a stick.

Defendant first contends that the prosecution failed to introduce evidence sufficient to prove beyond a reasonable doubt that she feloniously assaulted Freda Wood. We disagree.

When reviewing a challenge to the sufficiency of the evidence in a jury trial, this Court must determine whether viewing the evidence in the light most favorable to the prosecution a rational trier of fact could conclude the prosecution proved all the essential elements of the crime beyond a reasonable doubt. *People v Hicks,* 259 Mich App 518, 522; 675 NW2d 599 (2003).

To sustain a conviction for felonious assault the prosecution must prove beyond a reasonable doubt that the defendant (1) committed an assault (2) with a dangerous weapon, (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). In addition, the defendant must have the present ability or apparent present ability to commit a battery. *People v Grant,* 211 Mich App 200, 202; 535 NW2d 581 (1995).

Defendant challenges only the third element, arguing that the prosecution failed to present sufficient evidence to prove beyond a reasonable doubt that defendant had the requisite intent.

"Intent, like any other fact, may be proven indirectly by inference from the conduct of the accused and surrounding circumstances from which it logically and reasonably follows." *People v Johnson*, 54 Mich App 303, 304; 220 NW2d 705 (1974). In *People v Lawton*, 196 Mich App 341, 350; 482 NW2d 810 (1992), this Court concluded that the intent to place a victim in fear of an immediate battery was properly inferred where the defendants approached the victim with guns drawn and forced the victim from a parked car to the back door of a home. Similarly, in *People v Strong*, 143 Mich App 442, 452-453; 372 NW2d 335 (1985), this Court concluded there was sufficient evidence of intent where the defendant drove the victim to a deserted factory area, turned off the car's headlights, and placed the blade of a knife against the victim's throat.

In this case, there is no evidence that defendant touched Wood with the knife or the scissors. But, Wood testified that defendant stood one foot away from her, gestured with the scissors in her direction, and threatened to kill her. Thus, the record contains sufficient evidence from which a rational trier of fact could infer that defendant had the intent to place Wood in reasonable apprehension of an immediate battery.

We recognize that defendant testified that she was using the scissors to cut her hair and testified that she never intended to injure or scare Wood with the scissors; however, a witness testified that defendant had actually cut her hair the day before. The jury must resolve conflicts in witness testimony. *Strong, supra* at 453. Therefore, this Court will resolve credibility conflicts in favor of the jury's verdict. *People v Gonzalez*, 468 Mich 636, 640-641; 664 NW2d 159 (2003).

Thus, we find that viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude that the prosecution proved beyond a reasonable doubt that defendant committed a felonious assault upon Freda Wood.

Defendant next contends that the prosecution failed to introduce evidence sufficient to prove beyond a reasonable doubt that she committed a felonious assault upon Donna Copeland. We again disagree.

An assault may be committed by an unlawful act that places another in reasonable apprehension of receiving an immediate battery. *Grant, supra* at 202. We conclude that the prosecution presented sufficient evidence to prove defendant committed a simple assault upon Copeland at the front door of the home. Copeland testified that when she arrived at the front door, defendant answered the door holding a stick and a screwdriver. She further testified that defendant, who was standing five or six feet away from Copeland, said to her, "Come on, Donna. Come on" while making threatening gestures with the screwdriver.

Moreover, in light of the demonstration at trial of how defendant was holding the stick and the screwdriver when defendant opened the front door, the evidence was sufficient to establish that defendant was holding the screwdriver in a manner that rendered the screwdriver a dangerous weapon. Copeland testified that when defendant opened the front door, she had a screwdriver raised above her head, and said, "Come on, Donna. Come on." Therefore, it was

reasonable for the jury to conclude that defendant intended either to injure Copeland or to place her in reasonable apprehension of an immediate battery. In addition, while standing near Copeland at the front door, defendant had the present ability or apparent present ability to commit the battery.

Furthermore, the prosecution presented sufficient evidence to prove beyond a reasonable doubt that defendant also feloniously assaulted Copeland at the side door of the home. Copeland testified that when she went to the side door, defendant was standing near the door holding a knife. Although defendant was inside and Copeland was outside, defendant still had the present ability or apparent present ability to commit a battery. See *Grant, supra.*

Thus, viewing the evidence most favorable to the prosecution, we find a rational trier of fact could conclude that the prosecution proved beyond a reasonable doubt that defendant feloniously assaulted Donna Copeland.

We affirm.

/s/ William C.Whitbeck
/s/ Richard A. Bandstra
/s/ Jane E. Markey