STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 17, 2011
v	No. 295093 Wayne Circuit Court
DAVID TERRELL KING, Defendant-Appellant.	LC No. 09-016244-FH

Before: WHITBECK, P.J., and O'CONNELL and WILDER, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for the unauthorized taking or use of a motor vehicle, MCL 750.414, domestic violence, MCL 750.81(2), and malicious destruction of property under $200, MCL 750.377a(1)(d).[1] We affirm.

Defendant raises three issues on appeal. Defendant's first issue on appeal is whether there was insufficient evidence to establish domestic violence. Specifically, defendant contends that his testimony demonstrates that he acted in self-defense, and that reasonable doubt exists regarding whether he intended to batter the victim. We disagree. This Court reviews de novo a challenge to the sufficiency of the evidence in a bench trial. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). The evidence is viewed in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Id.*

To prove that defendant committed the offense of domestic violence, the prosecution was required to prove, beyond a reasonable doubt, that defendant and the victim were related in one of the ways set forth in MCL 750.81(4), and that "defendant either intended to batter the victim or that 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). Intent may be inferred from all the facts and circumstances. See *People v Safiedine*, 163 Mich App 25, 29; 414 NW2d 143

[1] Defendant was also charged with the offense of preventing or attempting to prevent the report of a crime, MCL 750.483a(2)(a); however, defendant was acquitted of this charge.

(1987). It is undisputed that defendant and Maria Davis-Hill were associated in the way described by the statute because they have a child in common, thus, the question is whether there is sufficient evidence that defendant intended to batter Davis-Hill or that his unlawful act placed her in reasonable apprehension of being battered.

Sufficient evidence was present to conclude that defendant intended to batter Davis-Hill. At trial, Davis-Hill testified that defendant pushed her down and dragged her down both his back stairs and the stairs of a neighbor's house, causing lacerations on her heel and ankle that required medical attention. In fact, defendant admitted to dragging her by the ankles in his home. However, defendant also testified that Davis-Hill was the initial aggressor and that he was trying to restrain and remove her from his home. Although defendant's account of the confrontation differed from the account given by Davis-Hill, this Court must, in considering proofs in a light most favorable to the prosecution, "avoid weighing the proofs or determining what testimony to believe." *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Rather, this Court must resolve all conflicts in favor of the prosecution. *Id.* Thus, there is sufficient evidence for a rational trier of fact to find that defendant intended to batter Davis-Hill.

Further, defendant appears to be making arguments based on credibility; however, questions of credibility and intent should be left to the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). It is for the trier of fact, rather than this Court, to determine what inferences to draw and to determine the weight of those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find beyond a reasonable doubt that defendant intended to batter Davis-Hill.

Defendant's second issue on appeal is whether the trial court erred in finding that defendant did not act in self-defense because the evidence presented at trial demonstrates that he was entitled to use force to stop Davis-Hill's assault. We disagree. In a bench trial, this Court reviews the trial court's findings of fact under the clearly erroneous standard, giving consideration to the special opportunity of the trial court to judge the credibility of the witnesses. MCR 2.613(C); *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). "A finding is clearly erroneous if, after a review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

A claim of self-defense first requires that a defendant act in response to an assault. *Detroit v Smith*, 235 Mich App 235, 238; 597 NW2d 247 (1999). A person is justified in using non-deadly force against another in self-defense if he is free from fault and, under all the circumstances, honestly and reasonably believes it is necessary to use force to prevent bodily harm to himself or another. See *People v Kemp*, 202 Mich App 318, 322-323; 508 NW2d 184 (1993); see also CJI2d 7.22.

Here, evidence of self-defense was presented by defendant in the form of his testimony. The trial court ruled that defendant did not act in self-defense, expressly rejecting the version of events given by defendant as not credible. The trial court accepted the testimony by the prosecution's witness, Davis-Hill, which indicated that defendant was the first aggressor and that he pushed and dragged her. The trial court found defendant's testimony regarding being hit with

a pot to be "incredible," and noted that defendant's only injury from the incident was a finger laceration. Moreover, Davis-Hill's testimony was consistent throughout direct and cross-examination, even correcting the attorneys when they made inaccurate summaries of the events. Also, her injuries were consistent with her testimony. Therefore, the trial court found that Davis-Hill's testimony was more credible, that she did not place defendant in any imminent danger, and that he did not act in self-defense. Again, it is for the trier of fact to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *Hardiman*, 466 Mich at 428. The trial court's findings were not clearly erroneous and were supported by Davis-Hill's testimony at trial and the trial court's assessment of witness credibility.

Defendant's final issue on appeal is whether there was insufficient evidence to convict him of the unauthorized taking or use of a motor vehicle. We disagree. As noted, we review de novo a claim of insufficient evidence and view the evidence in a light most favorable to the prosecution. *Wilkens*, 267 Mich App at 738.

MCL 750.414 provides, in relevant part: "Any person who takes or uses without authority any motor vehicle without intent to steal the same, or who is a party to such unauthorized taking or using, is guilty of a misdemeanor . . . ." To be convicted of this offense, a defendant must have intended to take or use the vehicle, knowing that he had no authority to do so. *People v Crosby*, 82 Mich App 1, 3; 266 NW2d 465 (1978).

Here, the evidence, when viewed in the light most favorable to the prosecution, shows that defendant used Davis-Hill's vehicle without authority. According to her testimony, she did not give her keys to defendant nor did she leave the keys in the ignition. Instead, defendant took her keys from her and drove away. Nowhere does defendant argue that Davis-Hill gave him permission or consented to his use of her vehicle. These facts, when viewed in the light most favorable to the prosecution, establish the elements of the unauthorized taking or use, without intent to steal, of a motor vehicle.

Defendant argues that he had constructive authority from the family to use the vehicle because his daughter was in the vehicle and it was a "family matter." Defendant has failed to adequately brief this position or offer any supporting legal authority; therefore, it is deemed abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Moreover, the argument is meritless. The law is designed to punish those who take possession of a vehicle without the consent of the *owner*. See *People v Hayward*, 127 Mich App 50, 61; 388 NW2d 549 (1983). Thus, the owner, Davis-Hill, is the only person able to give consent to the use of her vehicle. A family cannot give constructive authority or consent. Defendant's argument fails.

Affirmed.

/s/ William C. Whitbeck
/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder