

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 12, 2013

v

THOMAS ROMANO SAUVE,

Defendant-Appellant.

No. 311882
Macomb Circuit Court
LC No. 2011-001701-FH

Before: K. F. KELLY, P.J., and MURRAY and RIORDAN, JJ.

PER CURIAM.

Defendant Thomas Sauve was convicted by a jury of stalking, MCL 750.411h, and domestic assault, MCL 750.81(2). He was sentenced to one day in jail, with credit for time served, and 24 months' probation for each conviction, to be served concurrently. He now appeals as of right. We affirm.

I. FACTS AND PROCEEDINGS

Sauve challenges the sufficiency of the evidence. Reviewing the trial testimony in a light most favorable to the prosecution, the facts revealed the following course of events. Sauve was involved in a romantic relationship with the victim, Amanda Kolos, for approximately one year. At the outset of the relationship, both Sauve and Kolos were married, though each told the other they were going through a divorce. Unbeknownst to Kolos, however, although Sauve filed for divorce, he never actually served the divorce papers on his wife. Sauve's wife and two children continued to live in the marital home. Nonetheless, the relationship between Sauve and Kolos continued.

Eventually the relationship ended. Though they had separated, Sauve and Kolos continued to communicate on a frequent basis, with Sauve attempting to reconcile on multiple occasions. Over the course of several months, Sauve called and texted Kolos daily, begged her to take him back, alluded to killing himself, showed up to her place of work, came to her social gatherings and family functions uninvited and entered her home uninvited on multiple occasions. All the while, Sauve continued to represent to Kolos that he and his wife were divorced and that he was living alone.

One evening while Kolos and her friend, Meggan Julian, were at a bar, Kolos learned that Sauve had been lying to her throughout their entire relationship—that in fact, Sauve and his wife

were still married and living together. Kolos became very upset and left the bar with Julian. While driving, Kolos called Sauve to confront him and threatened to drive to his house. Sauve, who was already in his car, drove toward the area where Kolos was. When he found Kolos, both individuals pulled their cars to the side of the road and got out. A confrontation ensued in which Kolos hit and kicked Sauve while he held Kolos' wrists. Eventually, they were separated by Julian, and Kolos turned around to walk toward her car. Sauve subsequently reinitiated the altercation and pushed Julian to the ground, came toward Kolos, threw her to the ground and choked her. He did not stop until Julian pulled him off.

For his part, Sauve testified that on the night of the incident, he was fearful Kolos would harm his family, and he tracked Kolos down to diffuse the situation. After Kolos hit and kicked him several times and the two were separated, Suave told Kolos to leave his family alone. When she refused and began to walk toward her car, Sauve walked back toward her to plead for his family's safety. It was at this time that Kolos lunged at him. Fearing a second attack, Sauve raised his arms in self-defense and grabbed onto Kolos' coat, causing her to slip and fall on the wet and snowy road. He denied pushing or choking her. As noted, the jury convicted defendant of stalking and domestic assault.

II. ANALYSIS

Sauve argues there was insufficient evidence that he assaulted Kolos¹ because the prosecution failed to present sufficient evidence to disprove his claim of self-defense. We review a challenge to the sufficiency of the evidence de novo. *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006). To determine the sufficiency of the evidence, we look to “whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable doubt.” *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000). We draw all reasonable inferences in favor of the prosecution and accord deference to the trier of fact on all credibility determinations. *Id.* at 399-400.

MCL 750.81(2) provides, in relevant part:

Except as provided in subsection (3) or (4), an individual who assaults or assaults and batters his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, is guilty of a misdemeanor

To prove this crime, the prosecution is required to establish, beyond a reasonable doubt, that (1) there was a dating relationship between the defendant and the victim and (2) the defendant committed an assault or an assault and battery upon the victim. *People v Cameron*, 291 Mich App 599, 614; 806 NW2d 371 (2011). Sauve does not dispute that he had a dating relationship with Kolos.

¹ Sauve argues solely for a reversal of his domestic assault conviction.

A battery is defined as “an intentional, unconsented and harmful or offensive touching of the person of another” *People v Reeves*, 458 Mich 236, 240 n 4; 580 NW2d 433 (1998). An assault is “either an attempt to commit a battery or an unlawful act [that] places another in reasonable apprehension of receiving an immediate battery.” *Reeves*, 458 Mich at 240 (quotation marks and citation omitted). The requisite intent to commit either may be inferred from all the facts and circumstances presented at trial, including the defendant’s acts themselves. *Cameron*, 291 Mich App at 615.

Viewing the evidence in the light most favorable to the prosecution, the prosecution presented sufficient evidence to prove, beyond a reasonable doubt, that Sauve committed an assault or an assault and battery upon Kolos where Kolos testified she had turned to walk away from the initial confrontation when Sauve lunged at her, pushing Julian to the ground in the process. Sauve then threw Kolos to the ground and choked her. Julian saw Sauve standing over Kolos with his hands near her neck and Kolos was screaming that he was choking her. The prosecution also presented photographs, taken shortly after the altercation took place, depicting red marks around Kolos’ neck and bruising on her elbow, arm, and wrists. The evidence and reasonable inferences drawn therefrom support beyond a reasonable doubt that Sauve’s acts constituted an intentional, unconsented, and harmful or offensive touching.

The prosecution also presented sufficient evidence to disprove Sauve’s claim of self-defense. A defendant is justified in using non-deadly force against another if (a) he was not engaged in the commission of a crime at the time he used force, (b) he had the legal right to be where he was, and (c) he reasonably believed that the use of force was necessary to repel an “imminent unlawful use of force by another” MCL 780.972(2); see also *People v Goree*, 296 Mich App 293, 304; 819 NW2d 82 (2012). Because self-defense is an affirmative defense, the defendant bears the initial burden of producing some evidence of that defense. *People v Lemons*, 454 Mich 234, 247-248; 562 NW2d 447 (1997). The burden of proof, however, remains with the prosecution, and it must disprove the defense by presenting sufficient evidence to “convince a jury beyond a reasonable doubt that [the] defendant did not act in self-defense.” *People v Pearson*, 13 Mich App 371, 377; 164 NW2d 568 (1968); see also *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993). Whether the defendant acted in self-defense is ultimately a question of fact for the jury. *People v Prather*, 121 Mich App 324, 330; 328 NW2d 556 (1982).

At trial, Sauve testified Kolos lunged at him as he was pleading with her to stay away from his family and that he reacted in self-defense by grabbing onto her coat, thereby causing her to slip. However, the testimony of Kolos and Julian was to the contrary, namely that Sauve came after Kolos and threw her to the ground after she had turned to leave. Moreover, the photographs of Kolos’ neck contradict Sauve’s claim that he was merely holding onto Kolos’ coat. The jury was in a unique position to weigh all the evidence and determine the credibility of the witnesses. *People v Unger*, 278 Mich App 210, 228-229; 749 NW2d 272 (2008). Based on the verdict, it is clear the jury chose to discredit Sauve’s claim of self-defense in the face of the conflicting evidence. See *id.* We will not disturb its finding. Accordingly, the evidence at trial was sufficient to disprove Sauve’s claim of self-defense and support his conviction for domestic assault.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Christopher M. Murray
/s/ Michael J. Riordan