STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Petitioner-Appellee,	UNPUBLISHED October 11, 2007
v	No. 271544 Wayne Circuit Court Family Division
TIMOTHY J. HANNAH, Respondent-Appellant.	LC No. 05-443628-DL

Before: Murphy, P.J., and Smolenski and Schuette, JJ.

PER CURIAM.

In separate delinquency bench trials on two authorized petitions, respondent was convicted of two counts of felonious assault, MCL 750.82, one count of simple assault, MCL 750.81, and one count of malicious destruction of personal property $200 or more but less than $1,000, MCL 750.377a(1)(c)(i). He appeals as of right. We affirm.

With respect to the assault and felonious assault convictions, respondent argues that the trial court's factual finding that he did not act in self-defense was clearly erroneous, and he also maintains that the evidence was insufficient to support the convictions because there were disagreements and inconsistencies in the testimony given by the prosecution's witnesses.

In regard to criminal bench trials, this Court in *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005), stated:

> "Generally, we review a challenge to the sufficiency of the evidence in a bench trial de novo and 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 proved beyond a reasonable doubt." All conflicts with regard to the evidence must be resolved in favor of the prosecution. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime. [Citations omitted.]

Further, the credibility of witnesses in a bench trial is a matter for the trial court to decide, and this Court will not resolve it anew. *People v Jackson*, 178 Mich App 62, 64-65; 443 NW2d 423 (1989). A trial court's factual findings may not be set aside unless clearly erroneous. MCR 2.613(C); MCR 6.001(D); MCR 6.403.

"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). A simple criminal assault encompasses an attempt to commit a battery or an unlawful act that places another person in reasonable apprehension of receiving an immediate battery. *People v Jones*, 443 Mich 88, 92; 504 NW2d 158 (1993). In order to be justified in using nondeadly force, a defendant must honestly and reasonably believe that it was necessary to use the force to protect himself or herself from harm. CJI2d 7.22.[1] The amount of force used must be proportionate to the danger. *People v Kemp*, 202 Mich App 318, 322-323; 508 NW2d 184 (1993). "'Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt.'" *People v James*, 267 Mich App 675, 677; 705 NW2d 724 (2005) (citation omitted).

There was evidence of self-defense presented by respondent.[2] This evidence consisted of respondent's testimony and that of his mother. The trial court ruled that respondent did not act in self-defense, expressly rejecting the version of events given by respondent and his mother as not credible. The court accepted the testimony by the prosecution's witnesses which indicated that respondent assaulted two victims outside his home through use of a hockey stick and that respondent was the aggressor. The court found that respondent had not been pursued or chased into his home by one of the victims. We find no basis to reverse, where the court's ruling was premised on a credibility determination, and where the evidence, including inconsistencies within respondent's own account and between his version of events and that given by his mother, does not give us pause to question or invade the court's credibility determination. The testimony by respondent and his mother suggested, at times, confusion regarding what was observed and the sequence of events, while the testimony by the prosecution's witnesses was fairly consistent and lacked confusion. There was no clear error with respect to the court's finding that respondent did not act in self-defense, and there was sufficient evidence to find that respondent had not acted in self-defense, but was instead the aggressor.

With regard to respondent's claim that the evidence was insufficient to support the assault convictions because of inconsistencies and contradictions in the testimony, the argument lacks merit. We first reiterate that any conflicts in the evidence are resolved in favor of the prosecution, *Wilkens*, *supra* at 738, and any credibility determinations were for the trial court to resolve, *Jackson*, *supra* at 64-65. There was evidence that respondent, using threatening language, swung his fists at one of the victims and attempted to spit on her, thereby attempting to commit a battery or an unlawful act that placed the victim in reasonable apprehension of receiving an immediate battery. *Jones*, *supra* at 92. The evidence also supported a finding that respondent had the intent to commit a battery or to make the victim fear an immediate battery, and that he had the ability to commit a battery. CJI2d 17.1(3) and (4). Furthermore, there was

[1] The Legislature enacted the Self-Defense Act, MCL 780.971 *et seq.*, effective October 1, 2006, which provides statutory guidelines for addressing issues concerning self-defense. The crimes here occurred before the effective date of the act.

[2] This evidence only applied, however, to the felonious assaults that occurred outside respondent's home and not the earlier assault at a different location. There is no argument or basis in the record to reverse on self-defense relative to the simple assault.

evidence that the victim of the simple assault and another victim were later assaulted by respondent outside his home with a hockey stick, which clearly was being utilized as a dangerous weapon at that point, *People v Norris*, 236 Mich App 411, 414-415; 600 NW2d 658 (1999), and that respondent had the intent to injure or place the victims in reasonable apprehension of an immediate battery, *Avant*, *supra* at 505. Any inconsistencies in the testimony by the prosecution's witnesses were minor or inconsequential for purposes of our review. Reversal is unwarranted.

Respondent's final argument on appeal is that there was insufficient evidence to convict him of malicious destruction of property. He also contends that the trial court's finding that respondent was the person who committed the crime was clearly erroneous.

Under MCL 750.377a(1)(c)(i), a person who willfully and maliciously destroys or injures the personal property of another person is guilty of a misdemeanor when the amount of the destruction or injury is $200 or more but less than $1,000.

There was testimony by witnesses, who personally knew respondent, that he was next to the vehicle that was damaged for about ten minutes and that he was moving his upper body in an "up-and-down" fashion. There was also testimony that respondent stopped his activity when a neighbor backed out of her driveway and looked at respondent. A short time later, the owner of the vehicle discovered scratches, not previously seen, over the rear wheel well on the driver's side, which was where respondent had been observed standing by one of the witnesses. Although a couple other boys were seen nearby, one was on a bike several feet away from the vehicle and respondent was the only one seen making hand or upper body movements. Further, there was testimony that the vehicle was owned by a person other than respondent and that the repair cost was estimated at $800. The trial court did not clearly err in finding that respondent was the person who did the damage to the vehicle. While there were some discrepancies in the testimony, when viewing the evidence in a light most favorable to the prosecution, resolving all conflicts in favor of the prosecution, and giving deference to the trial court's assessment relative to credibility and the weight of the evidence, there was sufficient evidence to support the malicious destruction conviction.

Affirmed.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Bill Schuette