

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CURTIS QUENTIN MCGHEE,

Defendant-Appellant.

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UNPUBLISHED

June 22, 1999

No. 206082

Kent Circuit Court

LC No. 96-011831 FH

Before: Griffin, P.J., and Wilder and Danhof,\* JJ.

PER CURIAM.

Defendant was charged with two counts of assault with intent to commit murder, MCL 750.83; MSA 28.278, possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084. Following a bench trial, defendant was convicted of two counts of felonious assault, MCL 750.82; MSA 28.277, possession of a firearm during the commission of a felony, and as an habitual offender, fourth offense. The trial court sentenced defendant to two years' imprisonment for the felony-firearm conviction to be served consecutive to concurrent terms of two to fifteen years' imprisonment for each felonious assault conviction. We affirm.

On appeal, defendant argues that the evidence was insufficient to support his felonious assault convictions. We disagree. When reviewing a claim of insufficient evidence following a bench trial, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the offense were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985); *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *Id.*; *People v Drayton*, 168 Mich App 174, 176; 423 NW2d 606 (1988).

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*

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

*Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996); MCL 750.82; MSA 28.277. Defendant contends that because the trial court found that firing the gun was only meant to “frighten” the victims, defendant lacked the necessary intent for felonious assault.

A simple criminal assault is either an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). Defendant admits that he fired the shotgun at the victims and it is clear that the victims were hit by the shotgun pellets. Therefore, the first element of the offense has been met. Moreover, a gun is one of the enumerated weapons that qualifies as a dangerous weapon under the statute; hence, the second element offense is satisfied. MCL 750.82; MSA 28.277.

With respect to the third element, the trial court found that defendant intended to frighten the victims by his actions. Indeed, the trial court reasonably inferred from the evidence that, by shooting at the victims, defendant intended to frighten them and that such fear placed the victims in reasonable apprehension of receiving a battery. This finding is clearly supported by the evidence, and therefore, the third element of the offense was established.

Defendant also argues that the circumstances at the time of the offense placed defendant in apprehension of an immediate assault, and therefore, he did not have the requisite intent for felonious assault because he was acting in self-defense. We disagree.

The record shows that the trial court, acting as the trier of fact in this case, properly considered the circumstances surrounding the offense, and assessed the credibility of the witnesses. The trial court determined that the victims were located approximately 120 feet from defendant’s property and did not enter on the property, but stayed in the alley or public streets and sidewalk. In addition, the trial court found that there was no evidence that the victims yelled taunts at defendant prior to the shooting. Further, the trial court concluded from testimony and circumstantial evidence that neither of the victims were armed with a firearm or other weapon at the time of the incident. Resolution of factual disputes and credibility issues are reserved for the trier of fact, *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990), and we will not disturb those findings absent a showing of clear error. MCR 2.613(C); *People v Swirles (After Remand)*, 218 Mich App 133, 136; 553 NW2d 357 (1996). After a thorough review of the record, we are not convinced that any of the trial court’s findings, particularly that defendant did not act in self-defense, are clearly erroneous. Viewing the evidence in the light most favorable to the prosecution, we conclude that there was sufficient evidence from which a reasonable trier of fact could find that all the essential elements of felonious assault were proven beyond a reasonable doubt.

Affirmed.

/s/ Richard Allen Griffin  
/s/ Kurtis T. Wilder  
/s/ Robert J. Danhof