

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DURAN GIBSON,

Defendant-Appellant.

UNPUBLISHED

June 29, 1999

No. 203763

Recorder's Court

LC No. 96-003060

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DURAN G. GIBSON,

Defendant-Appellant.

No. 203774

Recorder's Court

LC No. 96-003059

Before: Doctoroff, P.J., and Markman and J.B. Sullivan*, JJ.

PER CURIAM.

In docket no. 203763, defendant appeals as of right from his jury trial conviction of burning personal property over fifty dollars, MCL 750.74; MSA 28.269. In docket no. 203774, defendant appeals as of right from his conviction by the same jury of felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to two months to four years' imprisonment for the burning personal property conviction, two months to four years' imprisonment for the felonious assault conviction, and two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant first argues that insufficient evidence was presented to sustain his convictions. We disagree. When reviewing a claim of insufficient evidence, this Court must view the evidence

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

in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), modified on other grounds 441 Mich 1201 (1992). Reasonable inferences and circumstantial evidence may constitute satisfactory proof of the elements of the offense. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

The elements of felonious assault are “(1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the complainant in reasonable apprehension of an immediate battery.” *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). “The elements of felony-firearm are that the defendant possessed a firearm during the commission or attempt to commit a felony.” *Id.*

The complainant testified that he and his girlfriend were walking toward their home when defendant came toward them and pointed a gun at the complainant’s head. Defendant told the complainant that he would kill him if the complainant ever disrespected defendant or his wife. The complainant’s girlfriend stepped between the complainant and defendant, and the complainant ran. Viewed in the light most favorable to the prosecution, this evidence was sufficient to establish beyond a reasonable doubt all the elements of felonious assault and felony-firearm. *Wolfe, supra*.

To establish the offense of burning personal property over fifty dollars, the prosecution must prove beyond a reasonable doubt (1) that the defendant burned the property; (2) that the property was personal property; (3) that when the defendant burned the property he intended to set a fire, knowing that this would damage another person’s property; and (4) that the property had a fair market value of more than fifty dollars. MCL 750.74; MSA 28.269; CJI2d 31.4.

The complainant testified that after making a police report regarding the assault he went home. While he was at home, the complainant heard a car door slam. The complainant looked out the window and saw defendant and an unidentified man. The complainant testified that he saw defendant put something on the hood or the windshield of his car. The complainant stopped looking out the window and soon thereafter someone knocked on the door and told the complainant that his car was on fire. The complainant testified that the value of his car, prior to it being set on fire, was five hundred dollars.

Further, the complainant’s neighbor testified that she was sitting by a window in her living room watching television when she saw a dark colored car, which she described as a “Torres [sic] or Contour or something,” drive up. Defendant testified that he had a burgundy Contour. Complainant’s neighbor further testified that two men got out of the car and came toward her house. She saw the two men walk past her window and then she heard a “wooshing sound like somebody had thrown a match on some gasoline or something.” She looked further out of her window and saw flames. She then saw the two men run to get back into their car and drive away. A Detroit Fire Department sergeant testified that after putting out the fire he found evidence of what appeared to be a molotov cocktail on the hood of the vehicle. A Detroit Fire Department lieutenant, who testified as an expert in the cause and origin of fires, testified that a flammable liquid accelerant was distributed at the base of the complainant’s windshield and a fire was deliberately set. This evidence, viewed in the light most favorable to the

prosecution, was sufficient for a reasonable factfinder to find that the elements of burning personal property over fifty dollars were established beyond a reasonable doubt. *Wolfe, supra*.

Defendant next claims that the trial court abused its discretion when it admitted into evidence a threatening statement defendant made to the complainant during an earlier court proceeding in this case. Defendant argues that the evidence was not relevant and was highly prejudicial. We disagree. Whether to admit evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v Lugo*, 214 Mich App 699, 709; 542 NW2d 921 (1995). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made. *People v Sawyer*, 222 Mich App 1, 5; 564 NW2d 62 (1997).

The complainant testified that during an earlier court proceeding in this case defendant told him that defendant should have killed the complainant when he had the chance. Evidence of a defendant's threat against a witness is generally admissible as conduct that can demonstrate consciousness of guilt. *People v Sholl*, 453 Mich 730, 740; 556 NW2d 851 (1996); *People v Kelly*, 231 Mich App 627, 640; 588 NW2d 480 (1998). Furthermore, "it is for the jury to determine the significance of a threat in conjunction with its consideration of the other testimony produced in this case." *Sholl, supra* at 740.

Because the threat was relevant to show consciousness of guilt and was not more prejudicial than probative, the trial court did not abuse its discretion by admitting defendant's statement into evidence.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Stephen J. Markman

/s/ Joseph B. Sullivan