

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS PATRICK MATA,

Defendant-Appellant.

UNPUBLISHED

June 23, 2000

No. 216295

Saginaw Circuit Court

LC No. 96-012184-FH

Before: Gage, P.J., and Gribbs and Sawyer, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted 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). He was sentenced to two to four years' imprisonment for the felonious assault conviction, to be served consecutively to a two-year sentence for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant argues that the trial court erred in denying his motion for directed verdict based on the insufficiency of evidence to convict him. We disagree. When ruling on a motion for directed verdict, the trial court must consider the evidence presented by the prosecutor up to the time the motion was made in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the charged crime were proven beyond a reasonable doubt. *People v Kelly*, 231 Mich App 627, 641; 588 NW2d 480 (1998). When reviewing a trial court's ruling on a motion for directed verdict, we test the validity of the motion by the same standard as the trial court. *People v Daniels*, 192 Mich App 658, 665; 482 NW2d 176 (1991). In reviewing the sufficiency of the evidence, we review the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, we will not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992); *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

The elements necessary to convict a defendant 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. *Avant, supra* at 505. The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony. *Id.*

Our review of the record in the present case convinces us that the prosecution presented sufficient evidence that Francisco Rosas was assaulted by defendant during a fight at the Bell Bar. Rosas testified he saw defendant shoot him with a pistol. The prosecution also presented evidence that Rosas was shot three times at fairly close range, reasonably indicating that defendant intended to injure Rosas, or at the very least place him in immediate fear of a battery. See *Avant, supra* at 505. Moreover, defendant's girl friend, Monica Castillo, stated that defendant admitted to her that he shot Rosas while trying to help a friend during the fight and that he gave the gun to a friend sometime after the shooting. Taking this evidence in the light most favorable to the prosecution, we conclude that the jury in this case could have determined beyond a reasonable doubt that defendant was guilty of felonious assault and felony-firearm. See *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *Avant, supra* at 505.

Although the record shows that Rosas' testimony regarding his identification of defendant was somewhat equivocal and that Castillo admitted she was involved in an acrimonious relationship with defendant at the time she gave her statement to the police and provided testimony at defendant's preliminary examination, these matters go to the weight and credibility of the testimony of these witnesses and were best resolved by the jury during their deliberation of defendant's guilt. See *People v Mehall*, 454 Mich 1, 6; 557 NW2d 110 (1997); *Avant, supra* at 505. Likewise, we conclude that the testimony of Noel Hernandez and Richard Reyes, that Fred Quiroga was holding a gun in Rosas' direction and that he then pointed the gun at them, again went to the weight and credibility of the testimony of Rosas and Castillo. At most, the testimony of Hernandez and Reyes merely served to show that Quiroga also possessed a gun at the time the fight broke out and Rosas was shot.

Affirmed.

/s/ Hilda R. Gage
/s/ Roman S. Gribbs
/s/ David H. Sawyer