

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN ALMORE FREEMAN,

Defendant-Appellant.

UNPUBLISHED

November 17, 2000

No. 221038

Van Buren Circuit Court

LC No. 99-011327-FC

Before: Neff, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797, extortion, MCL 750.213; MSA 28.410, kidnapping with the intent to extort money, MCL 750.349; MSA 28.581, assault with intent to inflict great bodily harm less than murder, MCL 750.84; MSA 28.279, felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 424(2). In addition to the mandatory two-year prison sentence for the felony-firearm conviction, the trial court sentenced defendant to serve concurrent terms of 7 to 25 years for his armed robbery and kidnapping convictions, 7 to 20 years for extortion, 6 to 10 years for assault with intent to do great bodily harm, and 2 to 4 years for felonious assault. Defendant appeals as of right. We affirm.

Defendant argues that given the inconsistent and unlikely nature of the testimony introduced by the prosecution at trial, the proofs were insufficient to support defendant's assault, armed robbery, and kidnapping convictions. We disagree.

At trial, the victim in this matter, Marvin Carrington, testified that when his fiancée's sister appeared in the yard as he was being led from his home at gunpoint, he took the opportunity believed by him to have been created by this "distraction" to make an attempt to disarm his captors, rather than to call out for this person to contact police. On appeal, defendant asserts that Carrington's failure to avail himself of this opportunity for police involvement belies any claim that he was "in fear for his well-being," or that he had been assaulted, robbed, or kidnapped that night.

Initially, we note that defendant's argument concerns the weight of the evidence, not its sufficiency. Whether the evidence at trial was sufficient to sustain a conviction and whether the verdict was against the great weight of the evidence are two separate questions. *People v Brown*,

239 Mich App 735, 746 n 6; 610 NW2d 234 (2000). Although criminal defendants need not take any special steps to preserve a challenge to the sufficiency of the evidence, *People v Cain*, 238 Mich App 95, 116-117; 605 NW2d 28 (1999), a challenge to the weight of the evidence supporting a verdict must first be made in the trial court by way of a motion for a new trial. *People v Marsack*, 231 Mich App 364, 370; 586 NW2d 234 (1998). Where, as here, a defendant has failed to so move and yet challenges the evidence supporting his convictions, this Court will confine its review to a determination whether such evidence was sufficient to allow a rational trier of fact to find that the elements of the crimes were proved beyond a reasonable doubt, and in doing so will not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *Id.*; see also *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Viewing the evidence in a light most favorable to the prosecution, we find that a rational trier of fact could have found that the prosecution proved the essential elements of each of the challenged crimes beyond a reasonable doubt. See *People v Godbold*, 230 Mich App 508, 522; 585 NW2d 13 (1998); *Wolfe, supra*.

With respect to defendant's assault convictions, the elements of felonious assault are an assault with a dangerous weapon, committed 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). The elements of assault with intent to do great bodily harm less than murder are an attempt or offer with force or violence to do corporal hurt to another, coupled with an intent to do great bodily harm less than murder. *People v Bailey*, 451 Mich 657, 668-669; 549 NW2d 325 (1996). For each of these crimes, the jury may infer the defendant's intent from both his words and conduct, as well as any circumstantial evidence. *Id.* at 685 (Cavanagh, J., dissenting). Moreover, the assault element of both crimes "is satisfied if the defendant committed an unlawful act which placed another in reasonable apprehension of receiving an immediate battery." *People v McConnell*, 124 Mich App 672, 678; 335 NW2d 226 (1983).

The prosecution introduced evidence sufficient to establish each of the above elements, as well as the fact that defendant was involved in these assaults either as a principal or an aider and abettor. See MCL 767.39; MSA 28.979. Carrington testified that defendant, along with his cohorts, beat and kicked him before binding his hands and feet with duct tape and then threatening his life with a handgun while removing cash from his pockets. When Carrington later tried to escape, defendant aided another in shoving Carrington halfway into the passenger compartment of defendant's van, and then dragging him as his legs dangled from the vehicle and scraped the roadbed. Carrington further testified that after escaping from the van, defendant gave chase and ultimately struck him in the head with a handgun, causing an injury that required several staples and left a five-inch scar on his head.

Consistent with this testimony, Carrington's fiancée testified that when she returned home that evening after escaping from defendant and his cohorts, Carrington had blood running from him "like a faucet," and his clothes had been shredded as if they had been "rubbed against something." Similarly, the officer who took Carrington's complaint on the day following the attack testified that while speaking with Carrington it was obvious that he had been assaulted, as his hands and knees were both bandaged and he had staples connecting several lacerations in his head. Moreover, during his testimony Carrington indicated that he was afraid for his life that night, as he believed he was going to be killed by his captors. Leaving determination of the

weight and credibility of such testimony to the jury, these proofs were sufficient to support defendant's assault convictions.

Given that the crime of armed robbery is established upon proof that the defendant took property from an individual's person during an assault and while armed with a dangerous weapon, *People v Norris*, 236 Mich App 411, 414; 600 NW2d 658 (1999), we additionally find the testimony sufficient to support defendant's conviction of armed robbery. Carrington specifically testified that after being bound with duct tape, more than \$300 was taken from him by defendant and defendant's brother as a third individual stood over him with a gun.

Next, under the form of kidnapping of which defendant was convicted, the prosecution was required to prove that defendant wilfully, maliciously, and without lawful authority, inveigled or kidnapped Carrington, with the intent to thereby extort from him either money or some other valuable thing. MCL 750.349; MSA 28.581, see also CJI2d 19.3. Carrington testified that on the night he was assaulted defendant had earlier become indignant with him during a conversation wherein Carrington discussed the fact that he had recently obtained a well-paying job which had enabled him to save a bit of money. When defendant later suggested that Carrington accompany him to the store to purchase beer, Carrington agreed. However, on the way to the store defendant stopped at the home of a mutual acquaintance and indicated that he needed to run inside for a moment. Shortly after entering the house alone defendant reappeared and motioned for Carrington to come inside, whereupon Carrington was assaulted, bound and robbed at gunpoint. Carrington was then compelled by threats of death to first telephone his fiancée and request that she bring his captors an additional sum of money, then to later return to his house along with two of his captors and hand over an even larger sum of money, while his fiancée remained with defendant's brother. We again find Carrington's testimony sufficient to support conviction of the charged crime.

Finally, with respect to the felony-firearm conviction, the necessary elements are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). Carrington testified that some time during the assault and robbery at the acquaintance's home, defendant obtained a handgun which he later used to strike Carrington in the head as the two struggled during Carrington's attempt to escape from the van. The weight and credibility of Carrington's testimony in this regard was a matter for the jury, with which this Court will not interfere on appeal. *Wolfe, supra* at 514. If believed, this testimony alone was sufficient to support defendant's conviction of felony-firearm. See *People v Hayden*, 132 Mich App 273, 296; 348 NW2d 672 (1984) (possession of a firearm may be proven without the actual admission into evidence of a weapon).

Affirmed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Richard Allen Griffin