

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY D. CARTER,

Defendant-Appellant.

UNPUBLISHED

June 22, 2001

No. 221307

Wayne Circuit Court

LC No. 99-000289

Before: K. F. Kelly, P.J., and O'Connell and Cooper, JJ.

PER CURIAM.

Defendant was convicted of felonious assault¹, and possession of a firearm during the commission of a felony², after a bench trial. Defendant was sentenced to six to forty-eight months for the felonious assault conviction, and two years for the felony-firearm conviction, the sentences to run consecutively. Defendant's sole issue on appeal is that the evidence presented at trial was insufficient to support his convictions. We disagree and affirm.

When determining whether sufficient evidence has been presented to sustain a criminal conviction, this Court views the evidence in the light most favorable to the prosecution and then determines whether a rational trier of fact could find that each of the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

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, 869 (1999); *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996); *People v Grant*, 211 Mich App 200; 535 NW2d 281 (1995). The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony. *Avant, supra* at 505; *Davis, supra* at 53.

¹ MCL 750.82; MSA 28.277.

² MCL 750.227b; MSA 28.424(2).

At trial, the complainant testified that in the early morning hours of December 25, 1998, defendant stood outside of her window, pointed a gun at her, and threatened to kill her. Complainant's husband testified that after he told complainant to call 911, he exited the house and drew his weapon on defendant. He ordered defendant to drop his weapon. Defendant then placed the gun in the back of his car where it was recovered by the police. Although defendant testified that the gun was unloaded and he had no intention of actually using it, a weapon's inoperability is not a defense to a felony-firearm charge. *People v Thompson*, 189 Mich App 85, 86; 472 NW2d 11 (1991), lv den 439 Mich 999 (1992). Thus, when viewed in a light most favorable to the prosecution, we conclude that a rational trier of fact could find that each of the essential elements of felonious assault and felony-firearm were proven beyond a reasonable doubt.

In essence, defendant's argument on appeal attacks the credibility of the prosecution witnesses. However, questions regarding the credibility of witnesses are left to the discretion of the trier of fact and will not be revisited on appeal. *Avant, supra* at 505. This standard applies to criminal bench trials as well as to jury trials. *People v Petrella*, 424 Mich 221, 269; 380 NW2d 11 (1985). Here, the trial court had the opportunity to evaluate all the testimony and found complainant, her husband, and a Detroit police officer present at the scene, to be more credible than defendant. We find no error requiring reversal.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Peter D. O'Connell
/s/ Jessica R. Cooper