STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN MUNDY,

Defendant-Appellant.

UNPUBLISHED
October 2, 2001

No. 227358
Wayne Circuit Court
LC No. 99-011557

Before: Owens, P.J., and Holbrook, Jr., and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for two counts of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant received concurrent sentences of five years' probation for the two felonious assault convictions and two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant first argues that there was insufficient evidence adduced at trial to support his convictions. We disagree. "When reviewing a claim regarding the sufficiency of the evidence, this Court examines the evidence in a light most favorable to the prosecution to determine if a rational jury could find that the essential elements of the offense were proved beyond a reasonable doubt." *People v Joseph*, 237 Mich App 18, 20; 601 NW2d 882 (1999).

"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 (1999). Intent may be inferred from all of the facts and circumstances. *People v Lugo*, 214 Mich App 699, 709; 542 NW2d 921 (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.

The evidence established that on March 5, 1999, defendant went to Chep Automotive, defendant's former employer, in order to check on his job status. Defendant had failed a drug test Chep required him to take before returning to work following defendant's disability leave. Defendant asked to speak to the manager, Tim Connelly. As instructed by Connelly, Chep's receptionist told defendant that Connelly was not available. Nonetheless, defendant proceeded into Connelly's office. Connelly testified that he felt threatened by the tenor of their conversation. Roderick Taylor, defendant's former supervisor, walked into the office and more

heated words were exchanged. After defendant pushed Taylor into a desk, both Taylor and the receptionist called the police. Taylor and Connelly testified that defendant then closed and locked the office door and produced a gun. Taylor and Connelly further testified that defendant ordered them to stand in different parts of the office and pointed the gun at each of them more than one time. Connelly testified that defendant made several threats, specifically that he was going to "put a bullet in our head." Taylor testified that defendant stated he "ought to blow my head off because I called the police on him."

When viewed in a light most favorable to the prosecution, we find this evidence sufficient to justify a rational trier of fact in finding beyond a reasonable doubt that defendant was guilty of both felonious assault and felony-firearm.

Defendant next argues that he was denied a fair and impartial trial when he was questioned by the trial court following his cross-examination by the prosecution. We disagree. Because defendant did not object to the court's questioning at trial, we review the alleged error under the plain error rule. "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain . . . , 3) and the plain error affected substantial rights. The third requirement generally requires a showing of prejudice . . . ." *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Further, if the three elements of the plain error rule are established, "[r]eversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error '"seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings" independent of the defendant's innocence.'" *Id.* at 763, quoting *United States v Olano*, 507 US 725, 736-737; 113 S Ct 1770; 123 L Ed 2d 508 (1993) (quoting *United States v Atkinson*, 297 US 157, 160; 56 S Ct 391; 80 L Ed 555 [1936]).

MRE 614(b) states that a trial court "may interrogate witnesses, whether called by itself or a party." In order to assist in the search for truth, courts are free to ask questions of witnesses as long as the questions would be appropriate if asked by either party and the questions do not give the appearance of partiality. *People v Davis*, 216 Mich App 47, 52; 549 NW2d 1 (1996). Further, a "trial court has greater discretion in questioning during a bench trial." *In re Jackson*, 199 Mich App 22, 29; 501 NW2d 182 (1993).

After reviewing the court's questioning of defendant, we find no error. The trial court asked a series of questions of defendant in an effort to clarify relevant issues, thereby aiding the court in its role as fact finder. The questions "were not intimidating, argumentative, prejudicial, unfair, or partial," *id.*, and aided the court in its search for the truth.

Affirmed.

/s/ Donald S. Owens
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Talbot