

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOVAN ROYAL,

Defendant-Appellant.

UNPUBLISHED

June 25, 2002

No. 232014

Wayne Circuit Court

LC No. 00-001749

Before: Zahra, P.J., and Cavanagh and White, JJ.

PER CURIAM.

Defendant was charged with two counts of assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was convicted of two counts of felonious assault, MCL 750.82, and felony-firearm. She was sentenced to eighteen months probation for the felonious assault convictions to be served consecutive to the mandatory two-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

This case arises from an argument between defendant and her neighbors on June 15, 2000. At trial, the prosecution alleged that defendant threatened to shoot and, in fact, fired several gunshots in the direction of two neighbors.

On appeal, defendant first argues that there was insufficient evidence to support her convictions. Specifically, defendant claims there was insufficient evidence that she possessed or fired a gun. When reviewing a challenge to the sufficiency of the evidence, we are required to determine "whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable doubt." *People v Nowak*, 462 Mich 392, 399; 614 NW2d 78 (2000).

"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), citing *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). The felony-firearm statute is violated when a defendant possesses a firearm during the commission or attempted commission of a felony. MCL 750.227b.

Here, there was sufficient evidence to support defendant's convictions. Leslie Wright testified at trial that while walking to a store, defendant approached her in a car and initiated a verbal altercation. According to Wright, defendant eventually exited the car and threatened to "jump," "kill," and "shoot" Wright. Wright testified that defendant approached her and reached for a black object near defendant's waist. At that time, Wright fled to a nearby store.

Wright further testified that later the same day, as she was walking to another store, she encountered defendant along with several other individuals near defendant's driveway. Defendant and Wright again began to argue. According to Wright, defendant again threatened to shoot her. At that time, Wright observed something black in defendant's hand, but could not definitely say whether the object was a gun. Testimony at trial established that Wright's roommate, Larissa Cromer, arrived at the scene and attempted to persuade Wright to leave. Mark Wrobelski, the neighborhood mailman, testified that he observed defendant, Wright and Cromer arguing.

Both Wright and Cromer testified that as they turned their backs to defendant to return home, they heard several gunshots. Cromer testified that she heard defendant threaten to kill her and Wright and then saw defendant pull a black gun from beneath a jacket and begin firing shots at her and Wright. Neighbor Lisa Cherry testified that she heard "about three" gunshots.

Defendant presented witnesses who claimed defendant did not fire any shots during the incident. However, resolving all conflicts in the favor of the prosecution, *Nowak, supra* at 399-400, we conclude that there was sufficient evidence to allow reasonable jurors to find that defendant fired a gun intending to injure the complainants or to cause the complainants to reasonably fear an immediate battery, *Avant, supra*. It is the province of the jury to assess the witness' credibility and to weigh the evidence. We will not disturb such determinations on appeal. *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001); *People v Lee*, 243 Mich App 163, 167; 622 NW2d 71 (2000).

Defendant's argument that the verdict was against the great weight of the evidence also fails. The trial court denied defendant's motion for new trial below. We review for an abuse of discretion the trial court's denial of a motion for new trial on the ground that the verdict was against the great weight of the evidence. *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001). "The test is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *Id.*, citing *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998).

As discussed, Wright testified that on two separate occasions defendant threatened to kill her and provided her reason to believe defendant possessed a gun. Several witnesses testified that there was a heated argument involving defendant, Wright and Cromer. Wright, Cromer and Cherry all testified to hearing several gunshots. Cromer claimed to have actually seen defendant firing the gun in her direction. The fact that witnesses related differing versions of events and the fact that the police recovered no shell casings or gun do not make defendant's convictions against the great weight of the evidence. As noted, it is the jury's role to judge the credibility of witnesses. *Aldrich, supra*; *Lee, supra*. Moreover, Cherry testified that after hearing the gunshots, she observed defendant hand an object to a bystander that was placed in the trunk of the bystander's car. That car left the scene soon thereafter. Cherry and Cromer also both testified that they saw defendant's brother picking items up off the ground prior to the police

arriving. Thus, there was evidence from which the jury could reasonably conclude that the gun and shell casings were disposed of prior to the police investigation. Under these circumstances, the evidence did not preponderate heavily against the verdict and the trial court properly denied defendant's motion for new trial. *McCray, supra*.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Helene N. White