

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DAVID JONES,

Defendant-Appellant.

UNPUBLISHED

March 30, 2004

No. 246227

Wayne Circuit Court

LC No. 02-005159-01

Before: Zahra, P.J., and Saad and Schuette, JJ.

PER CURIAM.

Defendant was charged with two counts of assault with intent to murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. Following a jury trial, he was convicted of one count of felonious assault, MCL 750.82, and felony-firearm. He was sentenced to eighteen months' probation for the assault conviction, to be served consecutively to the mandatory two-year prison term for felony-firearm. He appeals his convictions as of right and we affirm.

Defendant first contends that the evidence was insufficient to sustain the verdict.

In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing both direct and circumstantial evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). It is for the trier of fact to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Parshall Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

"Felonious assault is defined as a simple assault aggravated by the use of a weapon." *People v Jones*, 443 Mich 88, 100; 504 NW2d 158 (1993). "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). "A simple assault is either an attempt to commit a battery or

an unlawful act that places another in reasonable apprehension of receiving an immediate battery.” *People v Adrian Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996).

There is no dispute that defendant fired a weapon at Matthew Wilson. “The intentional discharge of a firearm at someone within range is an assault.” *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992). Wilson testified that defendant fired at him without sufficient provocation. That defendant harbored the requisite intent can be reasonably inferred from the circumstances of the shooting. *Id.* at 350. Defendant contends that he lacked the requisite felonious intent because he was acting in self-defense.

“A claim of self-defense or defense of others first requires that a defendant has acted in response to an assault.” *Detroit v Smith*, 235 Mich App 235, 238; 597 NW2d 247 (1999). When a defendant uses deadly force, the test for determining whether he acted in lawful self-defense has three parts: 1) defendant honestly and reasonably believed that he was in danger, 2) the danger which he feared was serious bodily harm or death, and 3) the action taken by the defendant appeared at the time to be immediately necessary, i.e., defendant is only entitled to use the amount of force necessary to defend himself. CJI2d 7.15; *People v Heflin*, 434 Mich 482, 502, 508; 456 NW2d 10 (1990); *People v Deason*, 148 Mich App 27, 31; 384 NW2d 72 (1985). “Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt.” *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

Defendant claimed that Matthew Wilson entered his apartment armed with a knife and assaulted him with it. Defendant shot him and he fled. After defendant went outside, he claimed that Wilson came at him with his car as if to run him down, so defendant fired another shot. According to Wilson, he knocked on defendant’s door several times and called out for his wife, whereupon defendant opened the door and fired two shots at him. A police investigator testified to finding bullet holes and blood spatters in the hallway. Wilson said he was not armed and his godson, Adrian Taylor, said he did not see any weapons in Wilson’s possession. Wilson and Taylor both testified that as they were driving out the gate, defendant fired at their car. Wilson’s and Taylor’s testimony, if believed, is sufficient to prove that defendant did not have a reasonable belief that he was in immediate danger of serious injury or death, either inside his home or out, and thus did not act in self-defense. The issue of witness “credibility is for the jury to decide and we will not resolve credibility issues anew on appeal.” *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002).

Defendant also contends that the jury’s verdict was against the great weight of the evidence. This issue has not been preserved for appeal because he did not file a timely motion for a new trial below. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997).

The crux of defendant’s argument is that Wilson’s testimony was fabricated because he was intoxicated and jealous. Because his testimony was incredible, the verdict was against the great weight of the evidence. The resolution of credibility questions is within the exclusive province of the jury, *People v DeLisle*, 202 Mich App 658, 662; 509 NW2d 885 (1993), and this Court may not resolve them anew. *Milstead, supra*. Further, because the evidence was sufficient to support the verdict, allowing it to stand would not result in a miscarriage of justice. *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999).

Affirmed.

/s/ Brian K. Zahra

/s/ Henry William Saad

/s/ Bill Schuette