

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHEAMEKIA MARIE FOSTER,

Defendant-Appellant.

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UNPUBLISHED

October 23, 2007

No. 270191

Wayne Circuit Court

LC No. 06-000366-02

Before: Bandstra, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial convictions of assault with a dangerous weapon (felonious assault), MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to six months to four years in prison for the felonious assault conviction and two years in prison for the felony-firearm conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that the evidence is insufficient to support her felonious assault conviction.<sup>1</sup> We disagree. Due process requires that evidence show guilt beyond a reasonable doubt to sustain a conviction. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). In reviewing a claim of insufficient evidence, this Court must view the evidence de novo, in a light most favorable to the prosecution, to determine “whether any rational trier of fact could have found that the essential elements of the crime were proven as required.” *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005).

In determining sufficiency of the evidence, “[i]t is for the trier of fact, not the appellate court, 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). It is also for the trier of fact to resolve issues of credibility. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). The prosecution “is not obligated to disprove every reasonable theory consistent with innocence to discharge its responsibility,” but must only prove

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<sup>1</sup> We note that defendant does not specifically challenge the sufficiency of the evidence with respect to the felony-firearm conviction.

its case despite any contradictory evidence. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). “[A]ll conflicts in the evidence must be resolved in favor of the prosecution.” *People v Fletcher*, 260 Mich App 531, 562; 679 NW2d 127 (2004), quoting *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of the crime.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (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.” *Avant, supra* at 505; MCL 750.82. An assault is “either an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery.” *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). A battery is “an intentional, unconsented and harmful or offensive touching of the person of another, or of something closely connected with the person.” *People v Reeves*, 458 Mich 236, 240 n 4; 580 NW2d 433 (1998). Circumstantial evidence is sufficient to establish a defendant’s intent. *Reeves, supra* at 244.

The elements necessary to prove aiding and abetting are as follows: “(1) the underlying crime was committed by either the defendant or some other person, (2) the defendant performed acts or gave encouragement that aided and assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time of giving aid or encouragement.” *People v Smielewski*, 235 Mich App 196, 207; 596 NW2d 636 (1999); MCL 767.39.

Defendant concedes that the evidence satisfied the first element of aiding and abetting, i.e., that there was an assault with a dangerous weapon. It was Tamara Elam who committed the assault when she used a handgun to hit Shenia Sturdevant in the face. Defendant also does not dispute that the evidence satisfied the second element, i.e., that defendant aided and assisted the crime through acts or encouragement. Indeed, it was defendant who had brought the handgun to the house where the assault occurred. The gun changed hands between defendant and Elam shortly before the assault, with no evidence of protest or struggle.

However, defendant claims the evidence is insufficient to satisfy the third element of aiding and abetting, namely that of intent with respect to the defendant. Contrary to defendant’s claim, there is circumstantial evidence of defendant’s intent. Defendant’s friend, Felecia Poe, spoke with defendant on her cell phone in the midst of her earlier fight with Sturdevant. Poe and Sturdevant could both still hear defendant on the line after Sturdevant rushed Poe, broke her phone and resumed fighting with her. Andrea Cavey, who drove defendant and Elam to the house, testified that defendant expressed anger at Sturdevant in the car before they arrived. The trier of fact could reasonably infer that defendant had been an aural witness to the earlier fight between her friend, Poe, and Sturdevant, that defendant was angry about the fight, and that she was motivated to take revenge on Sturdevant for it.

When defendant got out of the car at the house, defendant had the gun in her hand and exchanged it with Elam. There is evidence that defendant exchanged threatening words with Sturdevant in the street while holding the gun. When Elam threw the gun away after assaulting Sturdevant with it, defendant tried unsuccessfully to retrieve it. After Elam and Sturdevant stopped fighting, defendant began fighting with Sturdevant herself.

It was reasonable, given the evidentiary record above, for the trier of fact to infer that defendant and Elam acted in concert, and that defendant either intended an assault on Sturdevant with the gun, or knew, when Elam took the gun, that she would assault Sturdevant with it. In either version of events, all the elements of aiding and abetting a felonious assault – the assault, an act or encouragement, and intent – are satisfied. Therefore the evidence is sufficient to support defendant's felonious assault conviction.

Affirmed

/s/ Richard A. Bandstra

/s/ Michael J. Talbot

/s/ Karen M. Fort Hood