

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAHEED MUMIN,

Defendant-Appellant.

UNPUBLISHED

May 19, 2009

No. 283211

Wayne Circuit Court

LC No. 07-013199-FH

Before: Wilder, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Defendant Shaheed Mumin appeals as of right from his bench trial convictions of two counts of felonious assault, MCL 750.82, and one count of possession of a firearm during the commission of a felony, MCL 750.227b(a). We affirm.

Defendant first challenges the sufficiency of the evidence. In assessing this claim, we must review the evidence in the light most favorable to the prosecution. *People v Wolfe*, 440 Mich 508, 513-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).¹ To convict a defendant of felonious assault, the prosecutor must establish “(1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in apprehension of an immediate battery.” *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996) (internal citation and quotation marks omitted). A simple criminal 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) (internal citation and quotation marks omitted). “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 Starks*, 473 Mich 227, 240; 701 NW2d 136 (2005) (internal citations and quotation marks omitted; emphasis added by *Starks*). Further, if a defendant committed a battery, the assault

¹ Defendant cites *People v Hepner*, 285 Mich 631, 636; 281 NW2d 384 (1938), and *People v Keller*, 227 Mich 520, 524; 198 NW2d 939 (1924), to support his claim that because the witness testimony presented by the prosecution was inconsistent, this Court should resolve conflicts in the evidence in favor of defendant. See also *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). These citations are inapposite because those cases involve issues surrounding the great weight of the evidence, which is not at issue in this case.

element of felonious assault is necessarily satisfied. See *People v Nickens*, 470 Mich 622, 628; 685 NW2d 657 (2004).

Both victims, Antwon McClendon and Derrick Green, testified that defendant touched them with a gun and threatened to shoot them. This testimony allowed the trial court to infer that they were in reasonable apprehension of an imminent battery with a dangerous weapon. *People v McConnell*, 124 Mich App 672, 678-679; 335 NW2d 226 (1983). Moreover, based on that testimony, the trial court would also be justified in concluding that defendant actually committed a battery against both victims when he touched them. The assault element for the crime of felonious assault was clearly satisfied.

Further, the evidence also shows that defendant intended to place the two young men in reasonable apprehension of an imminent battery. "Because the law recognizes the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient to sustain a conclusion that a defendant entertained the requisite intent." *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985). Defendant pointed a silver handgun at the young men, he threatened to shoot them, and his stated purpose for doing so was because they walked onto his lawn. This evidence was sufficient for the trier of fact to infer beyond a reasonable doubt that defendant intended to place the young men in reasonable apprehension of an imminent battery. See, e.g., *People v Pace*, 102 Mich App 522, 534; 302 NW2d 216 (1980) ("[m]erely displaying a knife implies a threat of violence").

The evidence was also sufficient to convict defendant of felony-firearm. "The elements of felony-firearm are that the defendant possessed a firearm during the commission [of] or attempt to commit a felony." *Davis, supra* at 53. Felonious assault is, by definition, a felony and the evidence was unrefuted that defendant, in this case, possessed a handgun during the incident at issue.

In reaching our conclusion, we note that although there were some conflicts in the evidence, such conflicts are to be resolved by the trier of fact and will not be disturbed by this Court. *Wolfe, supra* at 513-515. Thus, viewing the evidence in the light most favorable to the prosecution, the evidence was sufficient to support defendant's convictions.

Next, defendant argues that defense counsel's failure to call defendant's wife, Georgia Cargill, as a witness and to call other character witnesses constituted ineffective assistance of counsel. Our review is limited to errors apparent on the record. *People v Knapp*, 244 Mich App 361, 385; 624 NW2d 227 (2001).

To establish ineffective assistance of counsel, a defendant must prove (1) that counsel's performance fell below an objective standard of reasonableness and (2) that it is reasonably probable that the outcome would have been different, but for counsel's errors. *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007). Defendant must also show that the proceedings were fundamentally unfair or unreliable. *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001). "Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy." *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). However, defense counsel may be ineffective where he has no strategic reason for failing to call witnesses who can corroborate the defendant's testimony. *People v Bass (After Remand)*, 247 Mich App 385, 391-392; 636 NW2d 781 (2001).

In *Bass*, *supra* at 391, we held that the defendant was denied the effective assistance of counsel for failing to call two witnesses known to counsel before trial and whose testimony “would have clearly supported defendant’s version of events.” Because the defense attorney’s testimony at an evidentiary hearing revealed no strategic reason for failing to call the two witnesses and their testimony would have corroborated the defendant’s testimony, “counsel’s failure to call the two witnesses was prejudicial in that [the] defendant was denied a fair trial where important corroborating testimony was not put forth to the jury.” *Id.* at 392.

Although this case is similar to *Bass* in that defense counsel’s performance was arguably deficient because he failed to call at least one witness to corroborate defendant’s testimony and the record shows no strategic reason for failing to do so, defendant has not demonstrated that the absence of this testimony affected the outcome of the trial. Cargill’s testimony would have corroborated defendant’s testimony that he merely talked to the young men in front of his yard and he did not pull out his gun, touch it, point it at anyone, or otherwise threaten anyone. However, her proposed testimony that other people, including a neighbor, Caureen Williams, became involved in the incident would have contradicted defendant’s testimony that a woman did not approach him during the incident. Moreover, the credibility of Cargill’s testimony would like have been diminished by her relationship to defendant. Thus, her proposed testimony was not reasonably likely to change the outcome of the trial.

Similarly, we do not find that counsel was ineffective with regard to the character witness testimony. It is true that defense counsel believed character testimony to be important and he planned to call at least one witness and actually believed he had done so, as evidenced by his closing argument. Even if counsel’s performance fell below an objective standard of reasonableness, defendant has not shown that, but for counsel’s conduct, the result of trial would have been different. Defendant failed to make an offer of proof showing who the character witnesses were or what their proposed testimony would be. Therefore, we hold that defendant’s claim of ineffective assistance fails.

We also decline defendant’s request for a remand because he has not properly supported his request with regard to any witnesses other than his wife and has not persuaded us that a remand is necessary. MCR 7.211(C)(1).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood