

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRENCE LAMAR SHAW,

Defendant-Appellant.

UNPUBLISHED

January 28, 2010

No. 287224

Wayne Circuit Court

LC No. 08-000539

Before: Gleicher, P.J., and Fitzgerald and Wilder, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of domestic violence, MCL 750.81(2), two counts of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. He was acquitted of two additional counts of third-degree criminal sexual conduct, MCL 750.520d(1)(b). He was sentenced to 93 days in jail for the domestic violence conviction, and concurrent prison terms of one to four years each for the felonious assault convictions, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant was convicted of assaulting his girlfriend (“victim”) and the victim’s mother, Emma Banks, during the early morning hours of December 20, 2007. According to the victim, defendant woke and interrogated her because he suspected that she was “messing around” with another man.¹ The victim moved from her bedroom to a bedroom where the victim’s son and Banks were sleeping. Defendant followed her into that bedroom, continued to question her, and then “checked” her by inserting his fingers in her vagina. He left, but then returned and pulled the victim back to her bedroom. Defendant then removed her pants and “checked” her again. Banks testified that, when she awoke to the sound of conversation, she rushed to the victim’s bedroom, and heard the victim yelling that she could not breathe and to please stop. Banks pushed on the door and demanded that defendant open it. Some time after, the victim exited the bedroom and ran with her son and Banks to the front of the home, where the victim called 911. The victim testified that defendant appeared with a long shotgun and pointed it at her and

¹ Defendant testified differently that the victim accused him of cheating after he returned home from being with a “lady friend.”

Banks.² The victim also testified that he threatened to kill her because she was “messaging around.” After the victim begged for her life, defendant left the house with the gun and drove off in the victim’s Chevrolet Lumina. Less than five minutes later, defendant returned without the gun and without the Lumina. The victim testified that defendant was calmer, but continued to accuse her. The police arrived, and defendant jumped out of a back window. The police apprehended defendant and the victim testified that the police found her Lumina parked around the corner from the house. Officer Michael Janoskey testified that his partner recovered a gun from a vehicle on the street, but, at trial, Officer Janoskey did not identify the make and model of the vehicle or know who owned it.

Defendant argues that there was insufficient evidence that he possessed a gun and, therefore, the evidence did not support his convictions for felonious assault and felony-firearm. We disagree.

When reviewing the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). The elements of felonious assault are an assault with a dangerous weapon with the intent to injure or place the victim in reasonable apprehension of an immediate battery. *People v Chambers*, 277 Mich App 1, 8; 742 NW2d 610 (2007). “The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony.” *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

Here, defendant’s argument is based on his assertion that the victim’s and Banks’s testimony concerning the gun was not credible. However, the credibility of the witnesses was for the jury to resolve. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). A reviewing court is required to “draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The victim’s and Banks’s testimony that defendant pointed a gun at them, viewed most favorably to the prosecution, was sufficient to prove beyond a reasonable doubt that defendant assaulted both the victim and Banks with a dangerous weapon, and that he possessed a firearm during the commission of a felony.

Defendant also argues that he was denied a fair trial because the trial court failed to instruct the jury on “specific intent” in accordance with former CJI2d 3.9 as part of its instructions for felonious assault. We disagree. This Court generally reviews claims of instructional error de novo. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002). Here, however, defense counsel expressed satisfaction with the court’s jury instructions and thereby waived review of the issue. *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002). In any event, defendant’s position is without merit. The trial court correctly instructed the jury on the requisite intent for felonious assault, i.e., that defendant must have “intended to

² Banks concurred that defendant pointed a gun at them at “a point in time” on the night when he was upset. However, defendant denied possessing a gun or pointing it at the victim or Banks.

injure the complainant or make the complainant reasonably fear an immediate battery.” An additional instruction on specific intent was unnecessary. *People v Maynor*, 470 Mich 289, 295-297; 683 NW2d 565 (2004).

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder