STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 28, 2010
v	No. 294580 Wayne Circuit Court
SHAWNISE SARGENT, Defendant-Appellant.	LC No. 08-005208-FC

Before: M. J. KELLY, P.J., and K. F. KELLY and BORRELLO, JJ.

PER CURIAM.

Defendant appeals by right her jury trial convictions of assault with intent to do great bodily harm less than murder, MCL 750.84, carrying a concealed weapon (CCW), MCL 750.227, two counts of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. She was sentenced to 19 months to 10 years' imprisonment for the assault with intent to do great bodily harm conviction, 19 months to 5 years' imprisonment for the CCW conviction, 19 months to 4 years' imprisonment for each felonious assault conviction, and two years' imprisonment for the felony-firearm conviction. We affirm.

I. SUFFICIENCY OF THE EVIDENCE

Defendant first argues that the evidence was insufficient to support her convictions of CCW and felony-firearm. We disagree. We review claims of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). We must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Kanaan*, 278 Mich App 594, 618; 751 NW2d 57 (2008). "Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime." *Id.* at 619.

To support a conviction for CCW in a motor vehicle, the prosecution must show: (1) that a weapon was present in a vehicle operated or occupied by defendant, (2) that defendant knew or was aware of its presence, and (3) that defendant was carrying the weapon. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). The elements of felony-firearm are: (1) the defendant possessed a firearm, (2) during the commission of, or attempt to commit, a felony. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

In the present case, Kanita Morton testified that after defendant's van hit Sharese Chapman's truck defendant immediately exited the van and "just hit [her] with the pistol." Morton did not see defendant holding a pistol when defendant exited the van, but immediately after defendant hit her, Morton saw defendant holding the pistol. Morton suffered a laceration above her eye and had to have eight stitches as a result of the blow. Based on this testimony, a reasonable jury could infer beyond a reasonable doubt that defendant hit Morton with a pistol that she had carried with her in the van. This evidence is also sufficient to establish that the defendant possessed a firearm during the commission of a felony, i.e., felonious assault.

Defendant, however, alleges that the evidence was insufficient because both defendant and her sister testified that defendant hit Morton with a wrench or tool. Given the jury's verdict, it chose not to believe this version of the events. This Court will not interfere with the trier of fact's role of determining the credibility of witnesses. *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005). Moreover, all conflicts in the evidence must be resolved in favor of the prosecution. *Id*. Accordingly, defendant's argument does not warrant any relief.

II. SENTENCING

Defendant next argues that the trial court erred by scoring offense variables (OVs) 2 and 4. Because defendant did not object to the scoring of these variables below, our review is for plain error affecting substantial rights. See *People v McLaughlin*, 258 Mich App 635, 670; 258 NW2d 860 (2003). "Scoring decisions for which there is any evidence in support will be upheld." *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

Here, the trial court scored OV 2 at five points. Defendant contends that this score was erroneous because her conviction for assault with intent to commit great bodily harm did not involve a pistol or any other weapon, but involved her vehicle striking Chapman's vehicle. We disagree. Offense variable 2 allows for the assessment of five points if "[t]he offender *possessed* or used a pistol, rifle, shotgun, or knife or other cutting or stabbing weapon . . . ." MCL 777.32(1)(d) (emphasis added). As we have already indicated, the evidence presented at trial supported an inference that defendant possessed the pistol when she drove her van into Chapman's vehicle. Accordingly, the trial court's decision to score OV 2 at five points was not plain error.[1]

Defendant also contends that the trial court erred by scoring OV 4 at ten points because there was no evidence that Chapman complained of a specific psychological injury or that Chapman sought psychological treatment. Again, we disagree. A trial court should score ten points under OV 4 if "[s]erious psychological injury requiring professional treatment occurred to

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[1] We note that defendant's reliance on *People v McGraw*, 484 Mich 120; 771 NW2d 655 (2009) is misplaced. In *McGraw*, 484 Mich at 135, the Court indicated that OVs are properly scored by reference only to the sentencing offense. The trial court here did not improperly consider conduct unrelated to the sentencing offense.

a victim . . . ." MCL 777.34(1)(a). However, "the fact that treatment has not been sought is not conclusive." MCL 777.34(2).

Here, Chapman testified that she cries every day, that she cannot sleep more than one or two hours a night, and that her pain medications are ineffective. She indicated that she has daily flashbacks of the incident and described how her injuries have changed her life. Specifically, she lost her business and home since the incident and she cannot pick up her grandson or raise her own adolescent children. Apparently, Chapman cried during her testimony to the court. Contrary to defendant's argument on appeal, there is no requirement in the law that required Chapman to state, "I am suffering from a serious psychological injury" in order for the trial court to score this OV. Considering Chapman's testimony, the trial court reasonably inferred that Chapman suffered psychological injury and, accordingly, it did not err by scoring OV 4 at 10 points. Defendant is not entitled to relief on appeal.[2]

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello

[2] Because no scoring errors occurred, there is no basis on which to conclude that counsel's performance was deficient for failing to object. See *People v Kulpinski*, 243 Mich App 8, 27; 620 NWd 537 (2000) (noting that failure to raise a futile objection does not constitute ineffective assistance of counsel).