

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GLEN ARTHUR ETHINGTON,

Defendant-Appellant.

UNPUBLISHED

February 27, 2001

No. 219149

Oakland Circuit Court

LC No. 98-160156-FH

Before: Meter, P.J., and Neff and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right from jury convictions of felonious assault, MCL 750.82; MSA 28.277, ethnic intimidation, MCL 750.147b; MSA 28.344(2), and two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), for which he was sentenced to concurrent terms of one to four years and one to two years in prison, to be served consecutively to the mandatory two-year sentence for felony-firearm. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that he was denied a fair trial due to prosecutorial misconduct. Claims of prosecutorial misconduct are decided on a case-by-case basis. This Court examines the record and evaluates the alleged improper remarks in context to determine whether the defendant was denied a fair and impartial trial. *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995).

“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 Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996).

The prosecutor’s witnesses testified that defendant appeared to load a shotgun, point it in their direction, and threaten to shoot the victim. That testimony, if believed, was sufficient to prove the elements of felonious assault. *People v Counts*, 318 Mich 45, 53-54; 27 NW2d 338 (1947). Even if the jury believed defendant’s testimony that he simply displayed the weapon but

did not point it at anyone, the evidence would have been sufficient to prove the elements of the crime charged. *People v Pace*, 102 Mich App 522, 534; 302 NW2d 216 (1980). Therefore, the prosecutor did not misstate the law when she argued that proof that defendant pointed the weapon at the victim was not necessary to prove that the crime had been committed.

Affirmed.

/s/ Patrick M. Meter

/s/ Janet T. Neff

/s/ Peter D. O'Connell