

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDGAR RUSH,

Defendant-Appellant.

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UNPUBLISHED

December 13, 2002

No. 235987

Wayne Circuit Court

LC No. 00-011758-01

Before: Griffin, P.J., and White and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his convictions following a jury trial of two counts of assault with a dangerous weapon, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to three years' probation for the felonious assault convictions and a two-year term for the felony-firearm conviction. We affirm.

I

Defendant asserts that the guilty verdicts on the felonious assault charges were against the great weight of the evidence and that his right to due process was violated where the trial court stated at sentencing that it "would not have come to the same conclusion" as the jury.

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 Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). [*People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).]

In a case tried to a jury, an objection going to the weight of the evidence can be raised only by a motion for new trial before the trial court. *People v Bradshaw*, 165 Mich App 562, 565; 419 NW2d 33 (1988). Failure to move for a new trial waives the issue. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). However, the issue may be considered if failure to do so would result in a miscarriage of justice. *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999).

Both complainants testified similarly regarding the events in question. Both testified regarding two encounters with defendant, and that defendant wielded a gun the second time he

approached them and fired several shots. Roland Walker, the father of one of the complainants, testified that he observed defendant in his car during the first incident, alone, and identified him. The evidence did not preponderate heavily against the verdict. *People v Gadowski*, 232 Mich App 24, 28; 592 NW2d 75 (1998).

## II

Defendant also maintains that there was insufficient evidence to support his felony-firearm conviction. Defendant asserts that no evidence was presented that he obtained possession of a gun, and that a felony-firearm conviction requires at least that a defendant carry or possess a firearm. Defendant argues that there was no physical evidence to support that he had a weapon; no weapon was found, no shell casings were found, and there is no mention of a weapon in the police report. Defendant further maintains that had the jury been instructed on the special aiding and abetting rule applied in felony-firearm cases, it is highly likely that defendant would have been acquitted of the charge.

This Court reviews de novo a claim of insufficient evidence. *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995).

When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999). [*Avant, supra* at 505.]

“The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony.” *Avant, supra* at 505.

Defendant’s challenge fails. Although the complainants’ descriptions of defendant and his car differed slightly, both testified that the second time defendant confronted them, on Leicester Street, he stuck his hand out of the driver’s window of his car and shot a gun at them three or four times. Roland Walker testified that living in the corner house, he observed defendant in front of his house, and saw him drive around the block after the first encounter, come back, go two blocks down to Leicester Street, and that he heard gunfire. A gun and spent bullet casings were found near where defendant was arrested. Defendant’s sufficiency claim fails.

Defendant made no request for an aiding and abetting instruction, nor was there any evidence to support such an instruction. The only testimony before the jury was that defendant was alone in his car at all pertinent times.

Affirmed.

/s/ Richard Allen Griffin

/s/ Helene N. White

/s/ Christopher M. Murray