

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DUANE CARLOCK,

Defendant-Appellant.

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UNPUBLISHED  
December 2, 2003

No. 241576  
Wayne Circuit Court  
LC No. 01-011873

Before: Owens, P.J., and Fitzgerald and Saad, JJ.

PER CURIAM.

Defendant appeals his bench trial convictions of felon in possession of a firearm, MCL 750.224f, two counts of felonious assault, MCL 750.82, and felony-firearm, MCL 750.227b. The court sentenced defendant as a second habitual offender, MCL 769.11, to 24 to 120 months' imprisonment for felon in possession, 12 to 48 months' imprisonment for each count of felonious assault, and 24 months' imprisonment for felony-firearm. We affirm.

Defendant's charges and convictions arose out of his pointing a gun at two complainants with whom defendant had prior altercations. Defendant says there is insufficient evidence to support his convictions of two counts of felonious assault. Specifically, he contends the trial court could not have found beyond a reasonable doubt that the complainants reasonably feared an imminent battery or that defendant, in fact, possessed a gun. We disagree.

After a criminal bench trial, we review a claim of insufficiency of evidence "de novo and in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). To be convicted of felonious assault, there must be sufficient evidence to show that the defendant assaulted the complainant with a deadly weapon, and intended to injure or place the complainant in reasonable fear of an imminent battery. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). In *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999), we held that the complainant's testimony that he "was scared when [the defendant] pointed the gun at [him]" was sufficient to show that the complainant reasonably feared an imminent battery. Here, one complainant testified he felt threatened and worried when defendant pointed the gun at him. The other complainant testified he felt "real nervous" when defendant took out the gun and "a little nervous" when he put it away. This indicates they reasonably feared an imminent battery. Moreover, intent may be inferred from the evidence. See *People v Lawton*, 196 Mich App 341,

350; 492 NW2d 810 (1992). The complainants said defendant pointed the gun at their legs. Thus, it can be inferred that defendant intended to place them in reasonable fear of an imminent battery. When viewed in a light most favorable to the prosecution, the evidence is sufficient to establish beyond a reasonable doubt that defendant intended to place the complainants in reasonable fear of an imminent battery.

Defendant also maintains that there was insufficient evidence that he possessed a gun at the time of the incident. While defendant presented evidence that he did not have a gun, the prosecutor presented testimony from three witnesses that defendant did have one. Nevertheless, defendant argues that the evidence offered on the complainants' behalf is not credible. "However, questions regarding the credibility of the witnesses are for the trier of fact." *People v Givans*, 227 Mich App 113, 123-124; 575 NW2d 84 (1997). Here, the trial court, as the trier of fact, found the complainants' evidence that defendant possessed a gun more credible than defendant's evidence that he did not. Therefore, the trial court, as the trier of fact, properly convicted defendant of both counts of felonious assault.

Defendant further avers that there was insufficient evidence to support his conviction of felony-firearm. To be convicted of felony-firearm, a defendant must commit or attempt to commit a felony while carrying or possessing a firearm. MCL 750.227b(1). As discussed, there is sufficient evidence to support the trial court's conclusion that defendant possessed a gun while committing felonious assault. Felonious assault is a felony. MCL 750.82(1). Therefore, the court properly convicted defendant of felony-firearm.

Finally, defendant argues there was insufficient evidence to support his conviction of felon in possession of a firearm. A person who has been convicted of a specified felony cannot possess or carry a firearm until five years after all fines are paid, all jail time is served, and all conditions of parole are completed. MCL 750.224f(2)(a)(i)-(iii). Defendant stipulated at trial he had been convicted of a specified felony and that he was ineligible to possess a firearm on the date of the incident. As discussed, there was sufficient evidence for the trial court to find beyond a reasonable doubt defendant possessed a gun on the date of the incident. Therefore, defendant was properly convicted of felon in possession of a firearm.

Affirmed.

/s/ Donald S. Owens  
/s/ E. Thomas Fitzgerald  
/s/ Henry William Saad