

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY LAMAR GUNDRUM,

Defendant-Appellant.

UNPUBLISHED

December 28, 2004

No. 250336

St. Joseph Circuit Court

LC No. 03-011561-FC

Before: Murphy, P.J., White and Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of felonious assault, MCL 750.82, one count of domestic assault, MCL 750.81(2), and one count of possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to concurrent terms of sixty days in jail for felonious assault, to be served consecutively to the mandatory two-year term for felony-firearm. Defendant's sentence of ninety-three days for domestic assault was to be served concurrently with his sentence for felony-firearm. He appeals as of right and we affirm.

Defendant was convicted as a result of an incident in which he pointed a gun at his former wife, complainant Linda Gundrum, and a police officer who had accompanied Linda to defendant's residence. Defendant argues that the evidence was insufficient to support his convictions of felonious assault and domestic assault against Linda because no evidence showed that she was placed in fear of receiving an immediate battery.¹ We disagree. In reviewing the sufficiency of the evidence, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Bulls*, 262 Mich App 618, 623; 687 NW2d 159 (2004); *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

¹ Defendant does not challenge his second conviction of felonious assault or his conviction of felony-firearm.

The elements of felonious assault are: (1) an assault; (2) with a dangerous weapon; and (3) with the intent to place the victim in reasonable apprehension of an immediate battery. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). An assault is an attempt to commit a battery or an unlawful act that places another person in reasonable apprehension of receiving an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995).

The elements of domestic assault are: (1) the defendant and the victim are associated in one of the ways set forth in the statute;² and (2) the defendant either intended to batter the victim, or the defendant's unlawful act placed the victim in reasonable apprehension of being battered. MCL 750.81(2); *People v Corbiere*, 220 Mich App 260, 266; 559 NW2d 666 (1996).

At trial, defendant denied pointing the gun at either Linda or the officer. Although Linda testified that the gun remained at defendant's side, her brother and the officer testified that defendant pointed the gun at her head. Linda also testified that she was frightened by the incident and ran from the porch immediately upon seeing the gun. This evidence was sufficient to allow the jury to infer that she feared that she was about to be the victim of an immediate battery. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999); *Vaughn*, *supra*. The evidence, when viewed in a light most favorable to the prosecution, was sufficient to support defendant's convictions of felonious assault and domestic assault against Linda. *Bulls*, *supra*.

Defendant also argues that the judgment of sentence must be amended to allow the sentence for the remaining valid conviction of felonious assault against the officer and the sentence for felony-firearm to run concurrently. We disagree. A sentence for felony-firearm must be served consecutively to and before any sentence imposed for the underlying felony. However, the sentence may not be served consecutively to any other sentence imposed. MCL 750.227b; *People v Clark*, 463 Mich 459, 463-464; 619 NW2d 538 (2000).

The prosecution was not required to charge defendant with multiple counts of felony-firearm, notwithstanding the fact that it charged him with two counts of felonious assault. *People v Syakovich*, 182 Mich App 85, 88; 452 NW2d 211 (1989). The information indicated that "felonious assault" was the predicate felony for the charge of felony-firearm. The jury found defendant guilty of each charge which could serve as the predicate felony. Each conviction of felonious assault was supported by the requisite evidence. The trial court correctly designated defendant's sentences for felonious assault to run consecutively to his sentence for felony-firearm. MCL 750.227b(2); *Clark*, *supra* at 464 n 11. No remand is necessary.

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Kirsten Frank Kelly

² The defendant and the victim may be associated as former spouses, such as in this case.