

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
October 18, 2011

V

REGINALD HAROLD TURNER,

Defendant-Appellant.

No. 299252
Macomb Circuit Court
LC No. 2009-003450-FH

Before: FORT HOOD, P.J., and HOEKSTRA and METER, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of three counts of assault with a dangerous weapon (felonious assault), MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to time served for the felonious assault convictions and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right, and we affirm.

Defendant alleges that the prosecution failed to present sufficient evidence to support the convicted offenses. We disagree. When reviewing a challenge to the sufficiency of the evidence, this Court reviews the record de novo. *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006), aff'd 482 Mich 851 (2008). This Court will affirm a conviction if it is determined, when examining the evidence in a light most favorable to the prosecution, that the jury could have found that the elements of the crime were proved beyond a reasonable doubt. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). The reviewing court is "required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). It is irrelevant whether the evidence is direct or circumstantial, the same deferential standard is applied. *Id.* As such, the prosecution can establish the elements of a crime from circumstantial evidence and reasonable inferences arising from the evidence. *Id.* Furthermore, this Court must resolve any conflicts in the evidence in favor of the prosecution. *Wilkens*, 267 Mich App at 738.

To establish a conviction for felonious assault, the prosecution must prove there was an "(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). An assault occurs when one attempts to commit a battery or place someone in apprehension of a battery. *People v Nickens*, 470 Mich 622, 628; 685 NW2d 657

(2004). A battery is an intentional, unconsented and harmful or offensive touching of another. *Id.*

Defendant contends that the prosecution failed to provide sufficient identification evidence to support his convictions. We disagree. In a criminal prosecution, the identity of the defendant is an essential element of every crime. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976). The positive identification of a defendant by a witness may be sufficient to sustain a conviction. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Voice identification is recognized by this Court to be competent evidence when sufficient evidence exists to support the identification. *People v Murphy (On Remand)*, 282 Mich App 571, 583-584; 766 NW2d 303 (2009). This Court defers to the trier of fact's determination as to the credibility of the identification testimony. *Davis*, 241 Mich App at 700. We conclude that the prosecution provided sufficient circumstantial identification evidence to sustain defendant's convictions.

At trial, three officers testified that they were present outside of defendant's apartment when an individual cracked the door open and pointed a shotgun at them. The individual warned the officers to "back . . . up," and slammed the door. Officers Gurecki and Moore confirmed that defendant's voice matched the voice they heard from behind the door. Moreover, Officer Gurecki rejected the possibility that the voice could have been that of defendant's father, the only other male at the residence. He testified that he heard the voices of both individuals and was absolutely certain that defendant's father did not threaten the officers.

Officer Masserang further testified that the voice appeared to be "right at the door." After seeing the shotgun, the officers left to position themselves around the apartment building. Defendant continued to conduct himself in a hostile manner. When the officers surrounded the building, defendant appeared in the window and flipped the officers "the bird." After re-entering the apartment building and commanding defendant to exit the apartment, defendant appeared in the doorway, retreated back into the residence, and slammed the door shut. At trial, it was also established that defendant's father was in frail health; he was assisted by a can and limped when he walked, indicating that defendant's father was in no physical condition to hold and rack the shotgun at the door. Defendant contends that there was no fingerprint evidence on the gun to connect him to the crimes; however, a conviction may be proven by direct or circumstantial evidence. *Nowack*, 462 Mich at 400. There was sufficient circumstantial identification evidence presented at trial to support the jury verdicts of felonious assault upon the three police officers. *Wilkins*, 267 Mich App at 738.

There was also sufficient evidence presented at trial to support the felony-firearm conviction. To convict a defendant of felony-firearm, the prosecutor must demonstrate that the defendant carried or had in his possession a firearm during the attempt or commission of a felony. *People v Burgenmeyer*, 461 Mich 431, 436; 606 NW2d 645 (2000). Actual or constructive possession can be proved by direct or circumstantial evidence. *Id.* at 437. As stated above, there was sufficient evidence that defendant committed the felonious assaults, therefore, satisfying the first element of felony-firearm. Moreover, as discussed above, there was sufficient evidence for a reasonable jury to find that defendant possessed a shotgun while committing the felonious assaults. The officers identified the voice near the door to be that of defendant and testified that the voice was in close proximity to the cracked doorway where the shotgun was

pointed. The officers also located the shotgun in the closet next to the door after they arrested defendant. In reviewing the record in a light most favorable to the prosecution, there was sufficient evidence for a reasonable jury to find defendant guilty of felony-firearm.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Joel P. Hoekstra

/s/ Patrick M. Meter