

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
October 17, 2013

v

MARTINIS LAMONT HENRY,
Defendant-Appellant.

No. 310294
Wayne Circuit Court
LC No. 11-007942-FH

Before: SAAD, P.J., and SAWYER and JANSEN, JJ.

PER CURIAM.

Defendant appeals by right his bench-trial convictions of felonious assault, MCL 750.82, possession of a firearm by a felon (felon-in-possession), MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b.¹ Defendant was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 19 months to 6 years for the felonious assault and felon-in-possession convictions, and a consecutive prison term of two years for the felony-firearm conviction. We affirm.

Defendant argues that there was insufficient evidence to support his convictions. We disagree.

Following a bench trial, we review the evidence 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 proven beyond a reasonable doubt.” *People v Lanzo Construction Co*, 272 Mich App 470, 474; 726 NW2d 746 (2006). Any conflicts in the evidence must be resolved in favor of the prosecution. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005).

“The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with intent to injure or place the victim in reasonable apprehension of an immediate battery.” *People v Chambers*, 277 Mich App 1, 8; 742 NW2d 610 (2007). “An assault may be established

¹ Defendant was also charged with, and acquitted of, assault with intent to do great bodily harm less than murder, MCL 750.84.

by showing that one has attempted an intentional, unconsented, and harmful or offensive touching of a person.” *People v Starks*, 473 Mich 227, 229; 701 NW2d 136 (2005).

There was ample evidence of an assault in this case. Wendell Hill testified that defendant struck him in the head, leaving him with a bleeding laceration across his forehead. Defendant also shot Hill in the leg. Further, there was evidence that defendant used a dangerous weapon. Defendant used a gun to hit Hill in the head and shoot him in the leg. A gun is a dangerous weapon. MCL 750.82(1); see also *Chambers*, 277 Mich App at 8. Lastly, there was evidence that defendant intended to injure Hill. As noted, defendant hit Hill over the head with the gun and then pointed the gun at Hill and shot him in the leg.

Defendant’s primary argument is that Hill was not credible, so his testimony was not sufficient to sustain the convictions. However, any conflicts in the evidence presented at trial must be resolved in favor of the prosecution. *Wilkins*, 267 Mich App at 738. Furthermore, we must defer to the special opportunity of the trial court to determine the credibility of the witnesses who appeared before it at a bench trial. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). We conclude that the prosecution presented sufficient evidence to enable the trial court to conclude beyond a reasonable doubt that defendant committed the crime of felonious assault. See MCL 750.82.

The elements of felon-in-possession are (1) that the defendant is a convicted felon who is prohibited from possessing a firearm and (2) possession of a firearm by the defendant. MCL 750.224f; see also *People v Perkins*, 262 Mich App 267, 269; 686 NW2d 237 (2004), abrogated on other grounds by *People v Smith-Anthony*, 494 Mich 669 (2013). In this case, the parties stipulated that defendant had a previous felony conviction and was not eligible to possess a firearm. Hill testified that defendant had a gun with him, which he used to fire two shots. At least one of these shots struck Hill in the leg. We accordingly conclude that there was sufficient evidence to support defendant’s felon-in-possession conviction. See MCL 750.224f.

“The elements of a felony-firearm are that the defendant possessed a firearm during the commission of, or attempt to commit a felony.” *People v Johnson*, 293 Mich App 79, 82-83; 808 NW2d 815 (2011), quoting *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). As discussed previously, there was sufficient evidence to show that defendant possessed a firearm while committing a felonious assault. Thus, there was sufficient evidence to support defendant’s felony-firearm conviction as well.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Kathleen Jansen