

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS MARTIN MCCOGGLE,

Defendant-Appellant.

UNPUBLISHED

July 9, 1996

No. 178345

LC No. 93-009095

Before: Bandstra, P.J., and Markman and M. D. Schwartz, * JJ.

PER CURIAM.

Defendant appeals by right his 1994 bench trial conviction for felonious assault, MCL 750.82: MSA 28.277 and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). We affirm.

Defendant and complainant had an argument regarding a debt while attending a party at defendant's home. Complainant left the party. Complainant testified that defendant subsequently attempted to force him off the highway and pointed a gun at him. There were discrepancies among the witnesses testimony regarding the position of defendant's and complainant's cars with respect to each other. Complainant told an officer investigating an unrelated traffic accident about defendant pointing a gun at him and the officer stopped defendant. Defendant admitted to the officer that he kept two guns in his car and two loaded guns were found in the backseat of defendant's car.

On appeal, defendant claims that there was insufficient evidence to convict him of felonious assault. To review claims of insufficiency of the evidence to sustain a verdict, this Court views the evidence in the light most favorable to the prosecution to determine if a rational factfinder could find the essential elements of the crime proven beyond a reasonable doubt. *People v Reddick*, 187 Mich App 547, 551; 468 NW2d 278 (1992). "Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime." *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

* Circuit judge, sitting on the Court of Appeals by assignment.

The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) the present ability or apparent present ability to commit a battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). An assault is “either an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery.” *Id.* Here, complainant’s testimony that defendant pulled alongside him and pointed a gun at him was sufficient to establish all the elements of felonious assault beyond a reasonable doubt. Defendant correctly points out that some of the witnesses’ testimony varied as to where the two cars were in relationship to each other. But such discrepancies do not diminish the fact that there was sufficient evidence from which a rational factfinder could find all the elements of felonious assault beyond a reasonable doubt. Accordingly, we affirm defendant’s judgment of sentence.

Affirmed.

/s/ Richard A. Bandstra

/s/ Stephen J. Markman

/s/ Michael D. Schwartz