

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAJUAN WARD,

Defendant-Appellant.

UNPUBLISHED

May 9, 1997

No. 193349

Recorder's Court

LC No. 95-004295

Before: McDonald, P.J., and Reilly and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions 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). Defendant was sentenced to 2 ½ to 4 years' imprisonment for the felonious assault conviction and two years' imprisonment for the felony-firearm conviction, the two sentences to run consecutively. We affirm.

Defendant argues on appeal that the trial court erred in instructing the jury that when determining defendant's intent, it could consider evidence as to defendant's conduct before the actual assault on the complainant. We disagree.

This Court reviews jury instructions in their entirety to determine whether there is reversible error. *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994). The trial court is required to charge the jury concerning the law applicable to the case. *People v Moldenhauer*, 210 Mich App 158, 159; 533 NW2d 9 (1995). The instruction to the jury must include all elements of the crime charged and must not exclude material issues, defenses and theories if there is evidence to support them. *Id.* Reversal is not required where the jury instructions, taken as a whole, sufficiently protect the defendant's rights. *Id.*

Circumstantial evidence and reasonable inferences arising therefrom may constitute satisfactory proof of the elements of an offense. *People v Barclay*, 208 Mich App 670, 674; 528 NW2d 842 (1995). In particular, this Court, in *Barclay*, held that the intent to kill could be proven by inference from any facts in evidence. *Id.* In this case, it was proper for the jury to consider defendant's conduct

and declarations prior to and at the time of the assault, and all other circumstances calculated to throw light upon the intention with which the assault was made. *People v Drayton*, 168 Mich App 174, 177; 423 NW2d 606 (1988), quoting from *Roberts v People*, 19 Mich 401, 415 (1870). Consequently, instructing the jury that it could consider defendant's conduct at the lounge to determine his intent was consistent with the law regarding the use of circumstantial evidence to establish intent. The trial court adequately instructed the jury.

Next, defendant argues on appeal that the evidence presented at trial was insufficient to support his convictions. We disagree. In determining whether sufficient evidence has been presented to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201; 489 NW2d 748 (1992); *People v Baker*, 216 Mich App 687, 689; 551 NW2d 195 (1996).

The elements of felonious assault are (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 Malkowski*, 198 Mich App 610, 614; 499 NW2d 450 (1993). The felonious assault statute defines certain items as dangerous weapons: gun, revolver, pistol, knife, iron bar, club, and brass knuckles. MCL 750.82; MSA 28.277. The intentional discharge of a firearm at someone within range is an assault. *People v Johnson*, 54 Mich App 303, 304; 220 NW2d 705 (1974). A conviction of felony-firearm requires proof that the defendant carried or possessed a firearm during the commission or attempted commission of a felony. MCL 750.227b; MSA 28.424(2); *People v Williams (After Remand)*, 198 Mich App 537, 540-541; 499 NW2d 404 (1993).

In the instant case, complainant/police officer testified that he and his partners were on patrol in the area of St. Cyril and Harper observing a parked stolen vehicle. Complainant wore dark clothes and a large badge on a chain around his neck that hung down the center of his chest. As the police officers' vehicle, traveling east on Harper, turned north onto Hawthorne, a loud shot rang out. After this shot rang out, people were screaming, yelling and running, in the area in front of the lounge.

Complainant's vehicle stopped and complainant got out of the car. As complainant got out of the car, he heard more shots. Complainant walked toward where the shots were coming from. Complainant saw defendant backing down Harper firing a weapon. As defendant was firing another volley of shots, he began to turn in complainant's direction. As defendant turned, complainant shouted, "Police, drop the weapon." Complainant was ten or fifteen feet from defendant when he yelled. When defendant turned so that he was facing complainant, defendant fired another shot right at complainant. When the gun went off, complainant saw a muzzle flash, the fire that appears out of the barrel of the weapon when it goes off. The bullet was so close to complainant's head, he felt it go over his head. Complainant's partner's testimony was similar to the testimony given by complainant.

Further, the testimony of complainant and his partner was corroborated by two employees of the lounge defendant was at prior to the assault on the officer. One bouncer testified that defendant was

involved in an altercation with another patron and bouncer at the lounge. Because of this, defendant and another man were asked to leave the lounge. Defendant was intoxicated at the time, and when asked to leave, defendant refused. Some pushing between defendant and another individual occurred, but defendant eventually left. As defendant was leaving, he said, "I'll be back."

Five minutes later, the bouncer looked out the window and noticed that defendant was coming toward the lounge with a gun. As defendant got closer to the front door of the lounge, he started firing into the front door. Defendant then turned and went back toward the direction from which he had come. The bouncer testified that he watched defendant through bulletproof glass and saw defendant turn and fire at plainclothed police officers with badges around their necks. A female bouncer also testified that she saw defendant shoot in the direction of the police officers. This bouncer testified that she was able to see a flash come from defendant's gun. Viewing the above evidence in the light most favorable to the prosecution, a rational trier of fact could find the essential elements of the crimes of felonious assault and felony-firearm were proven beyond a reasonable doubt.

Defendant argues that because some witnesses testified that they did not actually see defendant shoot at the police officers there was insufficient evidence to support his convictions. The fact that various witnesses' accounts of the events differed is not dispositive. The jury had an opportunity to consider the testimony of each of the witnesses as to their location and consider the environment in which the witnesses were viewing the events. The testimony of many witnesses was consistent with respect to the chaos that ensued as a result of the shooting. The jury was in the best position to weigh the credibility of the witnesses. Assessing the credibility of a testifying witness is a function of the jury. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). "This Court may not interfere with the jury's resolution of credibility disputes." *People v DeLisle*, 202 Mich App 658, 660; 509 NW2d 885 (1993). When looking at the evidence in the light most favorable to the prosecution, sufficient evidence was presented to support defendant's convictions for felonious assault and felony-firearm.

Affirmed.

/s/ Gary R. McDonald
/s/ Maureen Pulte Reilly
/s/ Peter D. O'Connell