

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ANTHONY LEON HALL,

Defendant-Appellant.

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UNPUBLISHED

July 11, 1997

No. 192007

Berrien Circuit Court

LC No. 94-003850-FC-F

Before: Reilly, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Defendant was convicted of assault with intent to commit great bodily harm less than murder, MCL 750.84; MSA 28.279, possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and felon in possession of a firearm, MCL 750.224f; MSA 28.421(6). He was sentenced as an habitual offender (second offense) to 72 to 180 months' imprisonment for the assault conviction, to be served concurrently with forty to sixty months' imprisonment for the felon in possession of a firearm conviction. Those two sentences were consecutive to the two-year mandatory sentence for felony-firearm. Defendant appeals as of right. We affirm.

Defendant argues that the trial court erred by denying his motion for a directed verdict. We disagree. Defendant was charged with shooting two people after an altercation outside a store. The complainants testified that they did nothing to provoke the shooting. Defendant testified that he acted in self-defense. Various witnesses supported the complainants' version while other witnesses corroborated defendant's testimony. When the evidence is viewed in the light most favorable to the prosecutor, a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979). The trial court is not permitted to determine the credibility of witnesses when deciding a motion for directed verdict of acquittal. *People v Herbert*, 444 Mich 466, 474; 511 NW2d 654 (1993). The trial court did not err by permitting the case to go to the jury.

Defendant similarly argues that the verdicts were against the great weight of the evidence. We again disagree. Evidence supported the complainant's testimony that he was shot from a distance as he

fled the scene. Even accepting defendant's testimony that he believed he acted in self-defense, any such threat had ended when defendant shot the complainant. The trial court did not abuse its discretion when it denied defendant's motion for a new trial. *Herbert, supra* at 477.

Next, defendant argues that the prosecutor's conduct denied him a fair trial. The prosecutor asked one complainant if he knew how lucky he was when he described how bad his injuries could have been. No objection was raised. Defendant argues that his expression of sympathy "infected" the entire trial. We find no such taint from one offhand remark. *People v Bahoda*, 448 Mich 261, 271; 531 NW2d 659 (1995).

In addition, the prosecutor stated in closing argument that "I've been assaulted before. This is a horrible area, and I'm going to go up there at eleven o'clock at night with a pistol on my person doesn't make sense." Defendant argues that the prosecutor was placing herself at the scene of the crime (to bolster the evidence), but we believe she was making a confusing reference to the defendant in the first person. In any event, no objections or requests for curative instructions were made in response to the argument, so we will reverse only if such instructions could not have cured any prejudice. *People v Hall*, 396 Mich 650, 655; 242 NW2d 377 (1976). A timely objection could have eliminated any confusion about whether the prosecutor was also at the scene. Reversal is not required.

Finally, defendant argues that his sentences are disproportionate under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We disagree. The sentences are proportionate to the circumstances of the offense and the offender. Despite defendant's prior record and prior imprisonment, he carried a concealed handgun and used it in this case. Although defendant argues the court should have focused on his potential for rehabilitation, we find no error in the court's decision to place greater emphasis on the danger defendant posed to society.

Affirmed.

/s/ Maureen Pulte Reilly  
/s/ Harold Hood  
/s/ William B. Murphy