

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALLEN J. KING,

Defendant-Appellant.

UNPUBLISHED

August 14, 2003

No. 240367

Wayne Circuit Court

LC No. 01-009163

Before: Jansen, P.J., and Neff and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to fifteen months' to four years' imprisonment for the felonious assault conviction, and a consecutive two-year sentence for the felony-firearm conviction. We affirm.

Defendant's sole argument on appeal is that the prosecution failed to establish both the identity of the alleged assailant and that defendant possessed a weapon. We disagree.

When reviewing a sufficiency challenge, "a court must view the evidence in a light most favorable to the prosecution and determine whether any 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 (1992).¹ All evidentiary conflicts must be resolved in favor of the prosecution, *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001), and questions of credibility should be left for the trier of fact to determine, *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

The essential elements of felonious assault are (1) and assault (2) with a dangerous weapon and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery. *Id.* at 505. The essential elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony. *Id.*

¹ Amended on other grounds 441 Mich 1201, 489 NW2d 748 (1992).

The complainant testified that as he was waiting outside a store, he was approached by a white Ford Taurus. According to the complainant, defendant was seated behind the driver of the car. The complaint recounted that as the car pulled along side him, defendant pointed a gun at him and verbally threatened to harm him. The complainant then fled into a nearby alley, followed by defendant. At trial, the complainant specifically identified defendant as the person who threatened him while pointing a gun at him. Further, an eyewitness testified that she saw the complainant running around the store and saw defendant running “like he was going after” him. Also, the arresting police officer testified that when defendant was apprehended at the complainant’s residence, the complainant identified defendant as one of the three people involved in the incident at the store. Indeed, the officer testified that the complainant’s description of the three matched them “[t]o a T.” We find this evidence to be sufficient to establish that defendant was the assailant.

We further find unpersuasive defendant’s argument that the prosecution presented insufficient evidence to establish that defendant possessed a gun during the assault. Defendant’s argument is predicated on the assertion that the arresting officer found the gun in the trunk of the Taurus. However, the officer testified that he found the gun under some papers on the front passenger seat. This Court must resolve this evidentiary conflict in favor of the prosecution, *Harmon, supra* at 524. Even if the gun had been found in the trunk, this would not necessarily undermine the complainant’s unequivocal testimony that defendant pointed a gun at him and threatened him outside the store.

Finally, although defendant denied that he had any confrontation with the complainant, the trial court concluded that the complainant “was telling the truth” about the incident. Deferring to the trial court’s superior position to judge witness credibility, and viewing the evidence presented in a light most favorable to the prosecution, we find there was sufficient evidence to support defendant’s convictions.

Affirmed.

/s/ Kathleen Jansen
/s/ Janet T. Neff
/s/ Kirsten Frank Kelly