

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHANCE AIKENS,

Defendant-Appellant.

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UNPUBLISHED

January 20, 2005

No. 250434

Wayne Circuit Court

LC No. 03-003839-03

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PIERRE CLESHAY ALMOND,

Defendant-Appellant.

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No. 250438

Wayne Circuit Court

LC No. 03-003839-01

Before: Gage, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

In Docket No. 250434, defendant Chance Aikens appeals as of right his jury trial conviction of possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant Aikens to two years in prison. We affirm.

In Docket No. 250438, defendant Pierre Cleshay Almond appeals as of right his jury trial convictions of two counts of assault with intent to commit murder, MCL 750.83, and one count of possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant Almond to fifteen to thirty years in prison for each of the assault with intent to commit murder convictions and two years for the felony-firearm conviction. We affirm.

The instant appeals arise out of a shooting incident that occurred at an unoccupied house in Detroit. Although the house was vacant, it had electricity and a man named Keith Heard<sup>1</sup> often stayed there. Heard and other men used the house to “chill out,” drink alcohol, and smoke “weed.” Melvin Caver testified that he was at the house with Heard and defendant Almond one evening when a man named “B.J.” arrived with a gun. Shortly thereafter, defendant Aikens arrived with a shotgun and two other guns. Defendant Aikens gave one gun to B.J., who gave a gun to Almond. Caver was not permitted to leave the house.

Caver’s brother, Keith Jones, soon arrived at the house with their cousin, Cornelius Hickman, and a woman named Latoya Jarrell. When Hickman saw that defendant Aikens had a gun, he and Jarrell backed up and hid behind Hickman’s car. Multiple gunshots were fired from multiple weapons. Jones and Caver fled, and they were not struck by the gunshots. Jarrell sustained three gunshot wounds and permanent paralysis, confining her to a wheelchair. Hickman was not hit by the gunshots, but every window of his car was shattered, and multiple bullet holes were found in the interior and exterior of the car. It appears that Hickman was the target of the gunfire.

Caver testified that he saw B.J., Heard, and defendants Aikens and Almond all shooting. Hickman saw Heard and defendant Aikens firing their weapons. Jones told the police that he saw Heard and defendant Almond firing their weapons, but at trial, he testified that B.J. and defendant Aikens were also shooting. Jarrell did not see the faces of any of the shooters. Defendant Almond told the police that B.J. had a rifle, Heard had a pistol, and defendant Aikens had a shotgun. Defendant Almond also asserted that he left when Hickman, Jones, and Jarrell arrived and that he heard gunshots, which were fired at Hickman, Jones, and Jarrell.

Defendant Aikens argues that the verdict is against the great weight of the evidence. Because he failed to raise this issue in a motion for a new trial, we review it for plain error affecting substantial rights. *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003). A new trial based on the weight of the evidence should be granted “only where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result.” *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998).

Felony-firearm consists of two essential elements: (1) the possession of a firearm (2) during the commission of, or the attempt to commit, a felony. MCL 750.227b(1); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

Defendant Aikens contends that the prosecution witnesses were not credible and that their testimony should be discounted. Caver and Hickman both testified that they saw defendant Aikens fire gunshots at Hickman and Jarrell. Jones did not tell the police that he saw defendant Aikens shooting, but he testified at trial that Aikens fired gunshots at Hickman and Jarrell. Defendant Almond told the police that defendant Aikens had a shotgun and that he knew defendant Aikens had shot at Hickman and Jarrell. Absent exceptional circumstances, issues of

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<sup>1</sup> Because Keith Heard was tried with defendants Aikens and Almond, he will occasionally be referred to as their co-defendant.

witness credibility are for the jury. *Lemmon, supra* at 642. We will not interfere with the role of the trier of fact in determining the weight of the evidence or the credibility of witnesses. *People v Hill*, 257 Mich App 126, 141; 667 NW2d 78 (2003). We conclude that the evidence does not preponderate heavily against the verdict, and a serious miscarriage of justice will not result. *Lemmon, supra* at 642.

Defendant Aikens argues in the alternative that there was insufficient evidence to support his conviction. Challenges to the sufficiency of the evidence in criminal trials are reviewed de novo to determine whether, in a light most favorable to the prosecutor, any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Randolph*, 466 Mich 532, 572; 648 NW2d 164 (2002).

Defendant Aikens maintains that there was no testimony that he aided, abetted, or knew the assaultive intent of others when he provided them with guns. We find this argument to be misplaced. Caver and Hickman both testified that they saw defendant Aikens fire gunshots at Hickman and Jarrell. Jones did not tell the police that he saw defendant Aikens shooting, but he testified at trial that defendant Aikens fired gunshots at Hickman and Jarrell. Defendant Almond told the police that defendant Aikens had a shotgun and he knew that defendant Aikens had shot at Hickman and Jarrell. Viewed in a light most favorable to the prosecution, this evidence was sufficient to convict defendant Aikens of felony-firearm, as the jury could have found beyond a reasonable doubt that he possessed a firearm during the commission of a felony, to wit, assault with intent to commit the murder of Hickman.

Defendant Almond first argues that the trial court erred in not permitting co-defendant Heard's defense counsel to question Hickman about an incident during which Hickman allegedly held a gun to someone's head. During recross-examination, Heard's defense counsel asked Hickman whether he "put a gun to somebody's head." The prosecution objected to the testimony as irrelevant, and the trial court sustained the objection. MRE 103(a)(2) provides that, to preserve an issue about a trial court ruling that excludes evidence, the substance of the evidence must be made known to the court by offer or be apparent from the context within which questions were asked. *People v Grant*, 445 Mich 535, 545-546; 520 NW2d 123 (1994). Because defense counsel failed to make an offer of proof about the excluded evidence, and its substance was not apparent from the context within which the question was asked, this issue has not been preserved for appellate review. MRE 103(a)(2); *Grant, supra* at 545-546. Accordingly, we review for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 762-763; 597 NW2d 130 (1999).

Defendant Almond asserts that he was denied the opportunity to reveal partiality or bias, but he fails to identify how this alleged testimony would accomplish this goal. His argument is speculative at best. Like the defendant in *People v McPherson*, 263 Mich App 124, 138, 687 NW2d 370 (2004), we cannot conclude that the trial court precluded defendant Almond from "placing before the jury any facts from which bias, prejudice, or lack of credibility might be inferred." Because defendant Almond has not shown that he was denied a "reasonable opportunity to test the truthfulness" of Hickman's testimony on any material issue, we conclude that he has not shown plain error. *Id.*

Defendant Almond also argues that the trial court erred in scoring prior record variable (PRV) 7 at twenty points. At the sentencing hearing, his defense counsel argued that PRV 7

should be scored at zero points, but she presented an entirely different argument than that which is presented on appeal. MCR 6.429(C). We therefore find defendant Almond's argument to be unpreserved and will review it for plain error affecting his substantial rights. *People v Kimble*, 470 Mich 305, 312; 684 NW2d 669 (2004); *Carines, supra* at 762-763.

Because a felony-firearm conviction may not be scored in this variable, the trial court erred in scoring PRV 7 at twenty points. MCL 777.57(2)(b). Using a corrected PRV 7 score of ten points yields a recalculated guideline minimum range of 135-225 months. The trial court sentenced defendant Almond to minimum terms of fifteen years (180 months), which fall within the recalculated range. MCL 769.34(10) provides:

If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence. A party shall not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals.

The Michigan Supreme Court recently interpreted this section as follows:

The second sentence of § 34(10) provides that, even though a sentence that is within the appropriate guidelines sentence range can be appealed if there was a scoring error or inaccurate information was relied upon, *it can only be appealed if the issue was raised at sentencing, in a motion for resentencing, or in a motion to remand.* [*Kimble, supra* at 311 (emphasis added).]

Because defendant Almond's sentence falls within the recalculated range and his defense counsel failed to raise this issue at sentencing, in a motion for resentencing, or in a motion to remand, we may not address this issue.<sup>2</sup>

Affirmed.

/s/ Hilda R. Gage  
/s/ Patrick M. Meter  
/s/ Karen M. Fort Hood

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<sup>2</sup> We note that defendant did not raise the issue of ineffective assistance of counsel.