

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SANFORD LAVELLE BURKS,

Defendant-Appellant.

UNPUBLISHED

January 31, 2006

No. 256747

Wayne Circuit Court

LC No. 04-001673-01

Before: Meter, P.J., Whitbeck, C.J., Schuette, J.

PER CURIAM.

Defendant appeals as of right from jury convictions of felonious assault, MCL 750.82, felon in possession of a firearm, MCL 750.224f(2), and possession of a firearm during the commission of a felony, MCL 750.227b(1). We affirm.

I. FACTS

On the afternoon of August 9, 2003, defendant was driving with his former girlfriend and was involved in an argument with a man on a street corner.¹ Defendant left the scene and went back to his home and obtained a duffel bag containing a sawed-off shotgun. Defendant returned to a house down the block from where defendant had been involved in the initial argument. Another verbal altercation ensued with a group of individuals on the porch, including the victim, Forest Jamison. The verbal argument continued and eventually defendant jumped out of the vehicle he was in with the sawed-off shotgun and pointed the gun at Jamison. Jamison “took off running,” gunshots were fired, and Jamison fell to the ground. Jamison said three shotgun pellets struck his right forearm and the side of his hand. Defendant put the gun in the trunk of the vehicle and left the scene.

II. SUFFICIENCY OF EVIDENCE

Defendant first contends that the evidence presented at trial was insufficient to sustain the verdicts.

¹ Although defendant’s former girlfriend had witnessed this argument, she was not certain that the man on the street corner was Forest Jamison, the victim.

A. Standard of Review

In reviewing the sufficiency of the evidence in a criminal case, we must review the record de novo and, viewing both direct and circumstantial evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). It is for the trier of fact to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

B. Analysis

Defendant argues that the evidence was insufficient to prove the one element in common to all three offenses: possession of a firearm. A witness testified that defendant got out of the car holding a sawed-off shotgun. The victim testified that defendant was holding a sawed-off shotgun, and pointed it at him. Such evidence was sufficient to prove beyond a reasonable doubt that defendant was in possession of a firearm. *People v Avant*, 235 Mich App 499, 505-506; 597 NW2d 864 (1999); *People v Espinosa*, 142 Mich App 99, 102-103, 106; 369 NW2d 265 (1985).

III. SENTENCING

A. Standard of Review

Normally, in reviewing the scoring of the sentencing guidelines this Court determines whether the sentencing court properly exercised its discretion and whether the evidence adequately supported a particular score. *People v McLaughlin*, 358 Mich App 635, 671; 672 NW2d 860 (2003). However, where the 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” MCL 769.34(10).

B. Analysis

Defendant argues that he is entitled to resentencing because the trial court erred in scoring Offense Variable (OV) 3, MCL 777.33. Even if this court were to conclude that OV 3 was improperly scored, any correction of the error would change defendant’s minimum sentence range for both felonious assault and felon in possession of a firearm. However, the minimum sentences imposed by the trial court were still within the revised ranges. Therefore, any error would be harmless and resentencing would not be required. *People v Houston*, 261 Mich App 463, 475; 683 NW2d 192 (2004), aff’d 473 Mich 399 (2005).

Affirmed.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Bill Schuette