

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRADLEY BERNARD BRASWELL,

Defendant-Appellant.

UNPUBLISHED

July 25, 2006

No. 261934

Wayne Circuit Court

LC No. 04-007014-01

Before: Neff, P.J., and Bandstra and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of domestic violence, MCL 750.81(2), felonious assault, MCL 750.82, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to the mandatory two-year prison term on the felony-firearm conviction, followed by two years probation on the remaining convictions. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant raises a single issue. Defendant argues that the evidence presented at trial was insufficient to prove his guilt on each charge beyond a reasonable doubt. We disagree. When deciding a challenge to the sufficiency of the evidence in a criminal case, this Court considers the evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000). “Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime.” *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). Questions of credibility should similarly be left to the trier of fact to resolve. *People Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

Domestic violence is a specific intent crime which is proved by establishing that the defendant and the victim were related to each other in a manner described by § 81(2) and that the defendant either intended to batter the victim or the defendant’s unlawful act placed the victim in reasonable apprehension of being battered. *People v Corbiere*, 220 Mich App 260, 266; 559 NW2d 666 (1996). The complainant testified that defendant pulled her hair, dragged her, knocked her down, beat her, spat on her, and kicked her, and that at the time the incident took place, she shared a residence with defendant and defendant was the father of her 19-month-old

son. This testimony was sufficient to establish the elements of domestic violence beyond a reasonable doubt.

Felonious assault is a simple assault that is aggravated by the use of a weapon. MCL 750.82(1); *People v Jones*, 443 Mich 88, 100; 504 NW2d 158 (1993). “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.” *Avant, supra* at 505. Felonious assault requires proof that defendant either had the present ability or the apparent present ability to commit a battery. *Jones, supra* at 100; CJI2d 17.9. The complainant testified that she and defendant had argued verbally and that defendant threw a book at her and struck her in the head. She left the home to try to call her mother and when she returned, the violence escalated. Defendant grabbed her by her hair, dragged her up the stairs and into the house, followed her to a bedroom after she ran to get their son, and then pointed a gun in her face while cursing at her and verbally expressing hatred for her. This testimony was sufficient to establish the elements of felonious assault beyond a reasonable doubt.

MCL 750.227b(1) provides, “A person who carries or has in his possession a firearm at the time he commits or attempts to commit a felony . . . is guilty of a felony, and shall be imprisoned for 2 years.” MCL 750.224f(1) provides, in pertinent part, that “a person convicted of a felony shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state until the expiration of 3 years after” certain specified criteria. MCL 750.224f(1).” For purposes both of these statutes, and pursuant to MCL § 750.222(d), the term “firearm” “means a weapon from which a dangerous projectile may be propelled by an explosive, or by gas or air. Firearm does not include a smooth bore rifle or handgun designed and manufactured exclusively for propelling by a spring, or by gas or air, BB’s not exceeding .177 caliber.” The jury was instructed that in order to find defendant guilty of the firearms charges, the jurors had to be convinced beyond a reasonable doubt that defendant possessed a firearm as defined by statute, and that the BB gun defendant possessed¹ was not a firearm for purposes of these offenses.

The complainant testified that defendant pointed a gun at her that she had seen in defendant’s possession before, that he kept this gun in various places within their house, and that he had once fired that gun in the air to frighten or disperse an unruly crowd in front their home. She described the ammunition that the gun used. She also testified that she bought defendant the BB gun, thereby showing that she had the ability to discern the difference between the BB gun and the gun used during the assault. Deferring to “the jury’s role of determining the weight of the evidence or deciding the credibility of the witnesses,” *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 12 (2004), this evidence supports defendant’s felony-firearm conviction.

As for the felon in possession conviction, the prosecution and defense placed on the record a stipulation that defendant had previously been convicted of a felony and was not eligible to possess a firearm as of June 21, 2004. Along with the complainant’s testimony about the

¹ A police officer responding to the scene testified that a .177 caliber BB gun was found in the home.

firearm used during he assault, this was sufficient to support defendant's felon in possession conviction. *Fletcher, supra* at 560.

Affirmed.

/s/ Janet T. Neff
/s/ Richard A. Bandstra
/s/ Brian K. Zahra