

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DELTRROY HILL,

Defendant-Appellant.

UNPUBLISHED

April 26, 2007

No. 268955

Wayne Circuit Court

LC No. 05-009876-01

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of aggravated stalking, MCL 750.411i, felon in possession of a firearm, MCL 750.224f, possession of a firearm during the commission of a felony, MCL 750.227b, and entering without owner's permission, MCL 750.115. Defendant was sentenced to two years' imprisonment for the felony-firearm conviction to be served before concurrent sentences of one to five years' imprisonment for the aggravated stalking conviction, one to five years' imprisonment for the felon in possession of a firearm conviction, and three months in prison for the entering without owner's permission conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case arises out of a shooting at the home of Naketa Collins with whom the defendant has two sons. On the evening of August 30, 2005, defendant forcefully entered Collins' house while she and some of her children, along with Lawson Robinson, Jr., were inside. At one point, there was a confrontation between defendant and Robinson. There was evidence that Robinson saw defendant point a gun at him, and Robinson fired four shots as he moved away from defendant and out of the house. Defendant also left the house after being hit in his left arm and hip by the gunfire. Following a bench trial, defendant was convicted as stated above. On appeal, defendant argues that there was insufficient evidence to support his convictions.

We review de novo a challenge to the sufficiency of the evidence in a bench trial to determine whether, when the evidence is viewed in a light most favorable to the prosecution, the trial court could have found that the essential elements of the offense were proven beyond a reasonable doubt. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39; 642 NW2d 339 (2002). We also review the trial court's findings of fact in a bench trial for clear error, giving consideration "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). A finding is considered to be clearly erroneous if, after a review of the entire record, we are left with the firm

and definite conviction that a mistake was made. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

A prosecutor must introduce sufficient evidence to justify a conclusion that the defendant was guilty of the crime beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). However a prosecutor is not required to “negate every reasonable theory consistent with innocence.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Circumstantial evidence and reasonable inferences from the evidence may establish the elements of the crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). It is for the factfinder to decide questions of fact and assess the credibility of witnesses. *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998). Once a factfinder is convinced of evidence, this Court must defer to the factfinder’s determination in factual matters and must draw all reasonable inferences and make credibility choices in favor of the verdict rendered. *Nowack, supra* at 400.

To establish the crime of felon in possession of a firearm, the prosecution must prove that the defendant was convicted of a felony and possessed a firearm without having satisfied certain statutory conditions. *People v Dillard*, 246 Mich App 163, 169-170; 631 NW2d 755 (2001). To establish the crime of felony-firearm, the prosecution must prove that the defendant committed a felony while possessing a firearm. *Dillard, supra* at 167. Possession of a firearm is the element of both these crimes that defendant disputes on appeal. Specifically, defendant cites Collins’ testimony that she did not see defendant carrying a gun during the incident. Defendant asserts this testimony contradicts Robinson’s version of the events and corroborates his own testimony that he did not have a gun.

Although it is true that Collins testified she did not see defendant with a gun that night, she also stated she was in the back room of the house and could not see what occurred between Robinson and defendant just before the shooting. Robinson testified he was standing in the hallway during the confrontation. He saw defendant motion to someone in a van and heard defendant say, “[C]ome here.” Robinson saw the man give defendant an AK-47 gun. According to Robinson, defendant “racked” the gun in preparation for firing and swung it around. Robinson took his own gun from its holster and shot in the direction of defendant as Robinson moved toward the back of the house and, eventually, outside.

In contrast, defendant testified he did not have a gun during the confrontation. The trial court found defendant’s testimony lacked credibility. Specifically, the trial court found defendant’s statements incredible because it did not believe that he could have ridden his bicycle from Collins’ house to his own house approximately one mile away after having been shot in his midsection as his testimony indicated. The trial court was entitled to accept Robinson’s testimony that defendant pointed a gun at him over defendant’s testimony that he had no gun. *Lemmon, supra* at 637. Because there was sufficient evidence that defendant possessed a gun, we hold that the trial court did not clearly err in finding defendant guilty of felon in possession of a firearm and felony-firearm.

Furthermore, the trial court did not clearly err in finding defendant guilty of entering without permission. “Breaking and entering without permission requires (1) breaking and entering or (2) entering the building (3) without the owner’s permission.” *People v Silver*, 466 Mich 386, 392; 646 NW2d 150 (2002). Here, Robinson testified he walked towards the front door after hearing a loud knock. He also testified that one of Collins’ children turned the

doorknob. Robinson claimed he told the child not to open the door and to move away, and the child moved to the side. Robinson then saw defendant forcefully open the door all the way and step inside the house. Accordingly, there was sufficient evidence that defendant entered Collins' house without permission.

Finally, the trial court did not clearly err in finding defendant guilty of aggravated stalking. "Aggravated stalking consists of the crime of 'stalking,' MCL 750.411h(1)(d), and the presence of an aggravating circumstance specified in MCL 750.411i(2)." *People v Threatt*, 254 Mich App 504, 505; 657 NW2d 819 (2002). Here, the prosecution claimed that defendant committed aggravated stalking, in part, because he engaged in stalking under the circumstances provided in MCL 750.411i(2)(a), which provides: "At least 1 of the actions constituting the offense is in violation of a restraining order and the individual has received actual notice of that restraining order...." There was evidence that Collins obtained a personal protection order against defendant in July 2005. Despite the order prohibiting such contact, Collins testified that defendant had called her on the telephone many times and argued with her about their children and that she felt harassed by defendant's actions. Collins also testified that defendant arrived at her house uninvited on the night of the shooting. Given this testimony, there was sufficient evidence that defendant stalked Collins in violation of the restraining order.

In sum, we conclude that the evidence presented at trial was sufficient for the trial court to find beyond a reasonable doubt that defendant committed the crimes of aggravated stalking, felon in possession of a firearm, felony-firearm and entering without owner's permission.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Stephen L. Borrello