

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDREDA CHAPMAN,

Defendant-Appellant.

UNPUBLISHED

November 30, 1999

No. 207956

Recorder's Court

LC No. 97-000465

Before: Whitbeck, P.J., and Gribbs and White, JJ.

PER CURIAM.

Defendant appeals as of right from her convictions of felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At trial, complainant testified that defendant pointed a gun at him. Complainant indicated that the object was made of metal, was a revolver, and appeared to be a real gun. Complainant acknowledged that he could not be certain that the gun was real. A second witness testified that he observed the gun held by defendant and assumed that it was real; however, he could not be certain. The witness stated that when the gun was pointed in his direction he backed away from the scene.

The trial court found defendant guilty of felonious assault and felony-firearm. The court found the witnesses' testimony regarding the gun to be credible. Subsequently, the court denied defendant's motion for a new trial.

We review a trial court's decision on a motion for new trial for an abuse of discretion. *People v Gadomski*, 232 Mich App 24, 27; 592 NW2d 75 (1999). A new trial may be granted when the verdict is against the great weight of the evidence. MCR 6.431(B); *People v Plummer*, 229 Mich App 293, 306; 581 NW2d 753 (1998). However, the crux of defendant's argument is that the prosecutor introduced insufficient evidence to convict her of either offense.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990). The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *Id.*

The trial court found defendant guilty of felonious assault and felony-firearm. 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. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). The elements of felony-firearm are: (1) the defendant possessed a firearm; (2) during the commission of, or the attempt to commit, a felony. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996).

Defendant argues that the evidence presented at trial was insufficient to support her convictions because the prosecution failed to prove that a gun was used in the alleged assault. We disagree and affirm. A person in possession of a toy gun may not be convicted of felony-firearm. *People v Broach*, 126 Mich App 711, 714; 337 NW2d 642 (1983). However, a person can be convicted of felony-firearm even if a gun is not introduced into evidence. *People v Hayden*, 132 Mich App 273, 296; 348 NW2d 672 (1984). The same reasoning permits conviction for felonious assault when the prosecutor does not produce a weapon at trial. Here, the trial court found as fact that defendant possessed a gun during the incident. The court based its finding on the witnesses' statements that they thought the gun was real, and on their actions during the incident. The trial court's finding of fact was not clearly erroneous. MCR 2.613(C). Viewed in a light most favorable to the prosecution, the evidence would allow a rational trier of fact to conclude that defendant possessed a firearm during the assault. *People v Smith*, 231 Mich App 50, 52-53; 585 NW2d 755 (1998). The evidence was sufficient to support defendant's convictions. The trial court did not abuse its discretion by denying defendant's motion for a new trial. *Plummer, supra.*

Affirmed.

/s/ William C. Whitbeck

/s/ Roman S. Gribbs

/s/ Helene N. White