

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JARVIS FERREAL SPENCER,

Defendant-Appellant.

UNPUBLISHED

March 18, 2003

No. 239346

Wayne Circuit Court

LC No. 01-004252-01

Before: Griffin, P.J., and Neff and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from nonjury convictions of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b, for which he was sentenced to prison terms of three months to four years and two years, respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). The trial court's factual findings are reviewed for clear error. A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). "An appellate court will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses." *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

"Felonious assault is defined as a simple assault aggravated by the use of a weapon." *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." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). "A simple assault is either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery." *People v Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996).

The elements of felony-firearm are that the defendant possessed a firearm during the commission or attempted commission of any felony other than those four enumerated in the statute. MCL 750.227b(1); *People v Mitchell*, 456 Mich 693, 698; 575 NW2d 283 (1998); *Avant, supra*.

All the witnesses were in agreement that defendant was carrying a shotgun as he walked down the street towards his house. Williams testified that he made a smart remark about the weapon, which prompted defendant to raise it slightly in his direction and warned him not to “f*** with me tonight.” Williams said he was afraid he might be shot and ran away. Evidence that defendant pointed a weapon toward Williams was sufficient to prove the elements of both crimes beyond a reasonable doubt. *People v Counts*, 318 Mich 45, 53-54; 27 NW2d 338 (1947); *Avant, supra* at 505-506. Even if defendant merely displayed the weapon but did not point it at Williams, the evidence was sufficient to sustain the convictions. *People v Pace*, 102 Mich App 522, 534; 302 NW2d 216 (1980).

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Hilda R. Gage