

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ELMA LEE HOWARD,

Defendant-Appellant.

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UNPUBLISHED

March 15, 2005

No. 251713

Wayne Circuit Court

LC No. 03-006349-01

Before: Murray, P.J., and Markey and O’Connell, JJ.

MEMORANDUM.

Defendant appeals by right from his convictions following a bench trial of felonious assault, MCL 750.82, discharge of a weapon in a dwelling or occupied structure, MCL 750.234b, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

The complainant, defendant’s brother-in-law, was shot in the leg at his and defendant’s residence in Detroit, on the night of May 12, 2003. The victim was scuffling with defendant and attempting to intervene in an altercation between the latter and the victim’s sister. According to the victim, defendant “went in his pocket, started to rattling around in his pocket,” then pulled out a gun in a plastic bag, pointed it at the victim, fired, then said, “don’t get involved in this because I’ll kill you.” Defendant admitted possessing the gun and that it discharged, but maintained that the shooting was entirely accidental.

Defendant’s sole challenge on appeal is the sufficiency of the evidence to support his conviction of felonious assault. When reviewing the sufficiency of evidence in a criminal case, a reviewing court must view the evidence of record in the light most favorable to the prosecution to determine whether a rational trier of fact could find that each element of the crime was proved beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994). Our review is de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

Conviction of felonious assault requires proof that the offender acted with the intent to cause injury, or place the victim in reasonable fear or apprehension of an immediate battery. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992). Defendant argues that the evidence did not support the conclusion that he fired his gun intentionally, or otherwise intended to frighten the victim. But, defendant merely urges this Court to accept his account of events, and to reject that of the complainant. But it is well settled that this Court must defer to the trier

of facts' credibility determinations. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998).

The accounts of a single eyewitness can establish a defendant's guilt beyond a reasonable doubt. See *People v Newby*, 66 Mich App 400, 405; 239 NW2d 387 (1976). In this case, the complainant's testimony that defendant reached in his pocket, and "started to rattling around" therein, could be taken to indicate that defendant intentionally produced his handgun. The complainant's further account of defendant's shooting him, then immediately threatening to kill him, supported the conclusion that defendant fired the weapon intentionally, and intended to injure the complainant, and to cause him to fear further such injury.

Defendant's credibility protestations notwithstanding, the record thus presented sufficient evidence to persuade the trial court beyond a reasonable doubt that defendant satisfied the intent element of felonious assault.

We affirm.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Peter D. O'Connell