

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DRAYTON,

Defendant-Appellant.

UNPUBLISHED

May 30, 2006

No. 256224

Wayne Circuit Court

LC No. 03-011797-01

Before: Cavanagh, P.J., and Fort Hood and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of felon in possession of a firearm, MCL 750.224f, felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. We affirm.

On appeal defendant argues that the evidence was insufficient to support his convictions. After review de novo, considering the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find the elements proved beyond a reasonable doubt, we disagree. See *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005).

To establish the crime of felonious assault, the prosecution must show that the defendant committed “(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). To establish that the defendant was a felon in possession of a firearm, the prosecution must show that he (1) possessed a firearm, and (2) was previously convicted of a felony. MCL 750.224f. And, to be convicted of felony-firearm, it must be proved that the defendant “possessed a firearm during the commission of, or the attempt to commit, a felony.” *Avant, supra*.

Here, viewing the evidence in the light most favorable to the prosecution, we conclude that it sufficiently supported defendant’s convictions. The victim testified that defendant, who he had seen before, fired a black automatic handgun five or six times and, although he did not see where defendant was shooting, he thought defendant was shooting at him and ran down the street to his sister’s house. The victim’s sister testified that she saw the man shooting the gun and could identify his features. She also testified that the victim was hysterical and scared when he arrived at her house and he was saying that Mikey [defendant] was shooting at him. The

victim and his sister further explained that they were involved in an altercation with defendant a few days earlier and the victim had heard rumors that defendant might shoot him.

It is the role of the trier of fact rather than this Court to draw reasonable inferences from the evidence and accord the proper weight to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). And, although witnesses called by defendant offered different and contradicting testimony as to the events that transpired, issues of credibility are also left to the trier of fact rather than this Court. See *Avant, supra* at 506. Accordingly, we conclude that, in light of the evidence, it was reasonable for the trier of fact to find that defendant committed a felonious assault while in possession of a firearm; therefore, these convictions are sufficiently supported. Further, defendant admitted that he was not allowed to possess a firearm and the prosecution presented evidence that defendant had previously been convicted of a felony, therefore, the felon in possession conviction was also sufficiently supported by the evidence.

To the extent that defendant is arguing that the verdict was against the great weight of the evidence, we disagree.¹ A verdict is against the great weight of the evidence if the evidence preponderates heavily against the verdict and a serious miscarriage of justice would result if allowed to stand. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). Here, although the testimony of defendant's witnesses conflicted with the prosecution witnesses' testimony, issues of credibility are for the trier of fact to resolve "unless it can be said that directly contradictory testimony was so far impeached that it 'was deprived of all probative value or that the jury could not believe it,' or [the testimony] contradicted indisputable physical facts or defied physical realities" *Lemmon, supra* at 645-646, quoting *Sloan v Kramer-Orloff Co*, 371 Mich 403, 410, 412; 124 NW2d 255 (1963). The testimony of the prosecution's witnesses was not "so far impeached," did not contradict indisputable physical facts, and did not defy physical realities. In fact, only their testimony was consistent. Therefore, we conclude that the verdict was not against the great weight of the evidence.

Finally, defendant argues that he is entitled to resentencing because of errors in the presentence investigation report. Because this Court granted defendant's motion to remand, *People v Drayton*, unpublished order of the Court of Appeals, entered February 25, 2005 (Docket No. 256224), and the trial court granted defendant's motion for resentencing, as well as the requested relief, we need not address this issue.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto

¹ Defendant did not include this issue in his statement of questions presented; therefore it is not properly before this Court. See MCR 7.212(C)(5); *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000).