

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KERRY ALAN LOCKHART,

Defendant-Appellant.

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UNPUBLISHED

April 23, 2009

No. 282486

Wayne Circuit Court

LC No. 07-011170-FH

Before: Borrello, P.J., and Murphy and M. J. Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his convictions after a jury trial for felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to two years in prison for the felony-firearm conviction, and to a consecutive term of one to four years in prison for the felonious assault conviction. Defendant's sole argument on appeal is that there was insufficient evidence to convict him of the charges. We conclude that there was sufficient evidence from which a jury could find defendant guilty of felonious assault and felony-firearm beyond a reasonable doubt. For that reason, we affirm. This appeal has been decided without oral argument under MCR 7.214(E).

When reviewing a claim of insufficient evidence, this Court reviews the record evidence in the "light most favorable to the prosecution to determine whether a rational trier of fact could have concluded that the elements of the offense were proven beyond a reasonable doubt." *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008).

"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 that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony." *Id.*

Defendant contends that the evidence was insufficient to convict him due to several alleged weaknesses in the prosecution's case. Defendant first challenges the credibility of the complainant's testimony. However, "[i]t is the province of the jury to determine questions of fact and assess the credibility of witnesses." *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998). The complainant and defendant were the only witnesses to the events at issue. By

convicting defendant, the jury clearly found the complainant's testimony to be credible. This Court affords deference to the jury's "special opportunity to . . . assess the credibility of the witnesses." *Unger, supra* at 228-229. Hence, defendant's assertions concerning the credibility of the complainant's testimony do not support his claim of insufficient evidence.

Likewise, defendant's challenges to the sufficiency of the evidence based on conflicting testimony regarding whether another individual was detained with him and the allegedly inadequate lighting near the scene of the assault are equally unpersuasive. The presence of another individual in the park does not alter the nature or strength of the evidence that it was defendant who approached the complainant in the alley with the shotgun. And to the extent that there was a conflict in the evidence, that conflict must "be resolved in favor of the prosecution." *People v Fletcher*, 260 Mich App 531, 562; 679 NW2d 127 (2004). Similarly, with regard to the lighting, we note that there was evidence that defendant and the complainant knew each other before this incident and that the complainant had no doubt about who assaulted him. This Court "is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Hence, we must infer that the complainant had adequate lighting to recognize defendant.

Defendant's remaining arguments on appeal concern his possession of the shotgun. The legally relevant inquiry is whether there was evidence that defendant carried or possessed a firearm during the commission of a felony. *People v Burgenmeyer*, 461 Mich 431, 438-439; 606 NW2d 645 (2000). According to the complainant, defendant pointed the shotgun at his head. Further, testimony established that officers recovered a shotgun near defendant shortly after the incident at issue. Hence, there was evidence from which a jury could conclude that defendant carried or possessed the shotgun during the commission of the felonious assault.

Viewing the facts in the light most favorable to the prosecution, a rational trier of fact could have determined that the elements of both charges were proven beyond a reasonable doubt.

Affirmed.

/s/ Stephen L. Borrello  
/s/ William B. Murphy  
/s/ Michael J. Kelly