

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EUMIR LEROY GIGGER,

Defendant-Appellant.

UNPUBLISHED

February 16, 2006

No. 258395

Wayne Circuit Court

LC No. 04-005469-01

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of assault with intent to do great bodily harm, MCL 750.84, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to four to ten years' imprisonment for the assault with intent to do great bodily harm conviction, three to five years' imprisonment for the felon in possession of a firearm conviction, and to five years' imprisonment for the felony-firearm conviction as a second offender. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's only issue on appeal is that there was insufficient evidence to support his convictions by the trial court. We disagree. This Court reviews a challenge to the sufficiency of the evidence in a bench trial de novo and in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002).

Defendant disputes the evidence indicating he shot the victim. He supports his contention by attempting to discredit the eyewitness testimony and the physical evidence offered at trial linking him to the scene. Additionally, he argues his alibi witness placed him somewhere else at the time the victim was shot.

The elements of assault with intent to do great bodily harm are: "(1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder." *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). Defendant also challenges his felon in possession of a firearm and felony-firearm convictions. Under MCL 750.224f(1), a convicted felon "shall not possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state. . . ." *People v Brown*, 249

Mich App 382, 386; 642 NW2d 382 (2002). Additionally, the elements of felony-firearm are (1) that the defendant possessed a firearm, (2) during the commission of, or the attempt to commit, a felony. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

In a challenge to the sufficiency of the evidence, “this Court will not interfere with the trier of fact’s role of determining the weight of the evidence or the credibility of the witnesses.” *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Williams*, 268 Mich App 416; 707 NW2d 624 (2005). “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Allen*, 201 Mich App 98, 100; 505 NW 2d 869 (1993). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The trial court chose to credit the testimony of the victim and an eyewitness, both of whom identified defendant as the shooter. Both the victim and the eyewitness had previously known defendant and could identify him by sight. Both specifically described the street layout, lighting, and location of defendant as he fired his weapon. The victim and eyewitness testified defendant approached from the east up Tyler Street. Both described a light in the yard at 202 Tyler Street, and other street and porch lights along Tyler Street, illuminating defendant as he approached. Both described defendant as standing 20 to 25 feet east of the driveway at 202 Tyler Street as he fired the handgun. The eyewitness saw and heard defendant fire the handgun and watched as the victim was struck. Moreover, physical evidence presented at trial by an investigating officer corroborated the victim’s and eyewitness’ version of events.

Additionally, the trial court chose to discredit the testimony of defendant and defendant’s alibi witness with regard to defendant’s whereabouts on the night of the shooting. Both defendant and the alibi witness had a vague recollection of where defendant was and what defendant did on the night of the shooting. There was evidence offered by an investigating officer that the alibi witness’ rendition of the facts prior to trial conflicted with her testimony during the trial. The trial court heard ample evidence regarding these issues, and chose to disbelieve the testimony of defendant and the alibi witness. It is not for this Court to make credibility determinations. Viewing the evidence in a light most favorable to the prosecution, we conclude that there was sufficient evidence that a rational trier of fact could find defendant guilty beyond a reasonable doubt of assault with intent to do great bodily harm, felon in possession of a firearm, and possession of a firearm during the commission of a felony.

Affirmed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald