

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE BRUCE ABRAM,

Defendant-Appellant.

UNPUBLISHED

February 3, 2005

No. 250905

Wayne Circuit Court

LC No. 03-004900-01

Before: Zahra, P.J., and Neff and Cooper, JJ.

PER CURIAM.

A jury convicted defendant of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to twenty-three months' to four years' imprisonment for the felonious assault conviction, to be served consecutive to two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant claims that there was insufficient evidence for the jury to find beyond a reasonable doubt that the elements of felonious assault and felony-firearm were met, and that defendant did not act in self-defense. We disagree.

When reviewing a claim that the evidence was insufficient to support defendant's conviction, this Court reviews the evidence presented in a light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime charged were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

The elements of felonious assault are: "(1) an assault, (2) with a dangerous weapon, (3) committed 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). Assault is defined as "an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery." *People v Adrian Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996). Here, defendant punched Ramone Johnson's father in the face, proceeded to chase Ramone with a gun and hit him in the back of the head with the gun. Defendant then fired a shot in the direction of Ramone and his brother, and Ramone was struck by the bullet. This evidence is sufficient to convict defendant of felonious assault.

To convict on a felony-firearm charge the prosecution must show “that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony.” *Avant, supra*. Since the evidence was sufficient to convict defendant of felonious assault and to show that defendant possessed a firearm during the commission of that felony, the elements of felony-firearm have also been met.

We also conclude that the prosecution proved beyond a reasonable doubt that defendant did not act in self-defense. “[S]elf-defense is justifiable . . . if the defendant honestly and reasonably believes that his life is in imminent danger or that there is a threat of serious bodily harm.” *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990). Here, the evidence establishes that defendant was chasing Ramone and his brother around with a gun, he hit Ramone in the back of the head with the gun and defendant was actually the aggressor when he fired a shot that struck Ramone. From this evidence a jury could reasonably conclude that defendant did not believe he was in imminent danger of death or serious bodily harm, and thus, was not acting in self-defense.

Though defendant correctly states that the prosecutor merely proved one plausible version of events and that defendant’s own testimony suggests that he did act in self-defense, this Court must afford deference to the jury’s special opportunity and ability to determine the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992). Thus, deference shall be given to the jury’s decision to believe the prosecution’s evidence that suggests defendant’s actions were not in self-defense.

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Jessica R. Cooper