

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHANE JULIUS EDWARDS,

Defendant-Appellant.

UNPUBLISHED

November 24, 2009

No. 287953

Kent Circuit Court

LC No. 07-011570-FH

Before: Talbot, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession of a firearm by a felon, MCL 750.224f, and assault with a dangerous weapon, MCL 750.82. He was sentenced to three to 10 years' imprisonment for the first count and 30 months' to eight years' imprisonment for the second, which are to run concurrently. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

At approximately 2:30 p.m. on October 20, 2007, Quarrie Kemple saw a grey SUV driving south on Nelson Avenue, near her home on the northeast corner of Nelson Avenue and Griggs Street in Grand Rapids. As the SUV passed between her home and defendant's home, which was across the street on the west side of Nelson Avenue, she heard three gunshots in quick succession and saw defendant standing in his driveway, pointing a handgun at the SUV. His brother, Chavae Edwards, and cousin, Michael Stubbs, accompanied him. Kemple telephoned the Grand Rapids Police Department, at which point she saw defendant, still holding the gun, walk to the front of his driveway and look down the street. When the police arrived, Kemple and her husband gave them a bullet that Kemple found lodged in the cushion of a futon in her living room. Her husband also informed the police of a newly formed bullet hole below a window on the western exterior wall of their home. The police detained defendant and interviewed Edwards and Stubbs, who claimed that the SUV stopped in front of defendant's home, and masked men rolled down the passenger side windows and fired three shots. The officers searched defendant's house and property for other evidence of the shooting, but found nothing beyond the bullet provided by the Kemples.

Defendant argues that there was insufficient evidence to prove he was guilty of either crime for which he was convicted. We review all of the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found all elements of the crime proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). At trial, with respect to the felon-in-possession charge, the parties stipulated that defendant had two prior felonies, thus making him ineligible to possess a firearm under MCL MCL 750.224f(2). The element of possession was also proven. Direct and circumstantial evidence supported that defendant had actual possession of the gun. *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989). Kemple testified she saw defendant aiming a gun at the SUV as it passed his house and at the time she heard the gunshots. She also saw him with the gun after she called the police. Two officers testified that someone on or near defendant's property fired the bullet found in the Kemple's home. Despite defendant's argument that some of the testimony and physical evidence indicated he did not have a gun, it is for the trier of fact, and not this Court, to make inferences from the facts and weigh the evidence and credibility of the witnesses. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002); *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Accordingly, we conclude that a reasonable trier of fact could have found beyond a reasonable doubt that defendant possessed a gun.

Similarly, with regards to assault with a dangerous weapon, the facts elicited at trial could enable a reasonable trier of fact to conclude that defendant attempted to shoot the passengers of the SUV as it passed in front of his driveway. This is all that is required for a conviction. MCL 750.82(1); *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995) (indicating the crime consists of "(1) a simple assault, (2) aggravated by the use of a weapon, and (3) [the] present ability or apparent present ability to commit a battery"); *People v Starks*, 473 Mich 227, 234; 701 NW2d 136 (2005) (an assault may be proved by an attempted battery). Kemple's testimony proved defendant's attempted battery, and proved that defendant had a gun and a present ability to commit a battery.

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Alton T. Davis