

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEJUAN MARKISE PAYNE,

Defendant-Appellant.

---

UNPUBLISHED

September 23, 2008

No. 278398

Wayne Circuit Court

LC No. 06-014559-01

Before: Schuette, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his April 5, 2007, bench-trial convictions for possession of a firearm by a felon, MCL 750.224f; felonious assault, MCL 750.82; possession of a firearm during the commission of a felony, MCL 750.227b; and assaulting and resisting a police officer, MCL 750.81d(1). We affirm. We decide this appeal without oral argument under MCR 7.214(E).

Defendant argues both that one of the trial court's findings was clearly erroneous and that there was insufficient evidence to support his conviction of felonious assault. When reviewing a claim of insufficient evidence following a bench trial, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). This Court does not set aside findings of fact by the trial court following a bench trial unless they are clearly erroneous. MCR 2.613(C). A finding is clearly erroneous if this Court, after reviewing the entire record, has a definite and firm conviction that a mistake has been made. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). Felonious assault requires proof of an assault, with a dangerous weapon, and with the intent to injure or place the victim in reasonable fear or apprehension of an immediate battery. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992); see also MCL 750.82.

Defendant first argues that the trial court clearly erred when it found that defendant pointed a gun at the victim. We disagree. The victim testified that defendant pointed a gun at his legs once and began raising the gun a second time. The trial court was entitled to judge the credibility of Officer Gadwell and credit that testimony. We will not "interfere with the trier of fact's role of determining the credibility of witnesses." *People v Kanaan*, 278 Mich App 594,

620; 751 NW2d 57 (2008). The trial court's finding that defendant pointed a gun at the victim was not clearly erroneous.

Defendant further argues that there was insufficient evidence to fulfill the intent requirement because it was only Officer Gadwell's subjective belief that defendant intended to injure him. Intent may be proved by circumstantial evidence and reasonable inferences drawn therefrom. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). Proof that only focuses on the subjective belief of the victim, however, is insufficient. *Id.* at 468. In this case, however, there is evidence of defendant's intent beyond the subjective belief of the victim. The victim testified that he saw the gun and saw defendant point it at him. Defendant later raised the gun a second time. During the episode, Officer Gadwell fired at defendant both times in response. This evidence was sufficient to enable the trial court to conclude beyond a reasonable doubt that Officer Gadwell was in fear or apprehension of a reasonable battery. Thus, there was sufficient evidence to support the conviction.

Affirmed.

/s/ Bill Schuette  
/s/ Brian K. Zahra  
/s/ Donald S. Owens