

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY WAYNE BURTON,

Defendant-Appellant.

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UNPUBLISHED

February 5, 2002

No. 227056

Kent Circuit Court

LC No. 99-011360-FH

Before: Sawyer, P.J., and O’Connell and Zahra, JJ.

MEMORANDUM.

Defendant appeals as of right from his conviction, following a jury trial, of assault with intent to do great bodily harm less than murder, MCL 750.84. We affirm.

Defendant was charged with unarmed robbery, MCL 750.530, felonious assault, MCL 750.82, and assault with intent to do great bodily harm less than murder. The complainant, defendant’s former girlfriend, testified that she was visiting with friends in a motel room when defendant forced open the door and attempted to stab her. She testified that defendant then returned, hit her several times, and threw her off the second-floor balcony. The prosecution did not present eyewitness testimony to corroborate this assertion, however, an emergency room physician testified that the complainant reported that she sustained her injuries in that manner. Further, a police technician testified that the balcony railing was damaged. The prosecution dismissed the charge of unarmed robbery. The jury acquitted defendant of felonious assault, but convicted him as noted above.

A new trial may be granted if a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e). The test is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). If the evidence conflicts, the issue of credibility ordinarily should be left for the trier of fact. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998). A defendant’s failure to raise the issue by moving for a new trial before the trial court waives the issue on appeal. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). However, the issue may be considered if the failure to do so would result in a miscarriage of justice. *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999).

To prove the offense of assault with intent to do great bodily harm less than murder, the prosecution must present evidence of the following: “(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). “Assault with intent to do great bodily harm less than murder is a specific intent crime.” *Id.* Intent can be inferred from the circumstances of the incident. *Id.*

Defendant argues that his conviction must be reversed because the verdict was against the great weight of the evidence. Because defendant did not move for a new trial in the trial court, he has waived appellate review of this issue. *Winters, supra*. Declining to review the issue would not result in a miscarriage of justice. *Noble, supra*. Defendant’s sole argument is that the complainant’s testimony was not worthy of belief. The jury was entitled to determine the credibility of the witnesses, *Lemmon, supra*, and to accept parts of the complainant’s testimony and to reject other parts. See CJI2d 3.6(1). The complainant’s testimony established the elements of assault with intent to do great bodily harm less than murder, *Parcha, supra*, and was supported by other evidence. Thus, defendant has not established that he is entitled to reversal of his conviction or a new trial. *Gadomski, supra*.

Affirmed.

/s/ David H. Sawyer  
/s/ Peter D. O’Connell  
/s/ Brian K. Zahra