

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TAMMAM AYOUB,

Defendant-Appellant.

---

UNPUBLISHED

March 5, 2002

No. 230515

Wayne Circuit Court

LC No. 00-004788

Before: Bandstra, P.J., and Murphy and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of felonious assault, MCL 750.82, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant and co-defendant Ali Bazzi, who is not a party to this appeal, entered complainant's pizza shop seeking a confrontation with Hassan Asleh, complainant's employee. Complainant ushered defendant and Bazzi out of the shop. Complainant testified that as he talked to Bazzi outside, he heard a vehicle behind him. As he turned, he was struck by a vehicle driven by defendant. A third, unidentified person exited the vehicle and struck him with a baseball bat. Asleh testified that defendant and Bazzi attempted to engage him in a fight. He saw complainant struck by a vehicle driven by defendant.

The trial court granted Bazzi's motion for a directed verdict of acquittal. In addition, the trial court reduced the charge against defendant from assault with intent to murder, MCL 750.83, to assault with intent to commit great bodily harm less than murder, MCL 750.84, as it pertained to Asleh. The jury acquitted defendant of assault with intent to do great bodily harm against Asleh, but convicted him of felonious assault against defendant. Subsequently, the trial court denied defendant's motion for a new trial.

A new trial may be granted on some or all of the issues if the 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). We review a trial court's decision on a motion for new trial for an abuse of discretion. *Gadomski, supra*.

The elements of felonious assault are: (1) an assault; (2) with a dangerous weapon; and (3) with the intent to place the victim in reasonable apprehension of an immediate battery. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). An assault is an attempt to commit a battery or an unlawful act which places another person in reasonable apprehension of receiving an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995).

Defendant argues that he is entitled to a new trial because the verdict was against the great weight of the evidence. We disagree and affirm defendant's conviction. The jury was entitled to believe complainant's and Asleh's testimony that defendant struck complainant with a vehicle. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). The trial court properly declined to substitute its judgment for that of the jury on issues of witness credibility. *Lemmon, supra*. Defendant committed a battery on complainant by hitting him with a vehicle. *Grant, supra*. A vehicle, when used in such a manner, is a dangerous weapon. MCL 750.82; *People v Blacksmith*, 66 Mich App 216, 221-222; 238 NW2d 810 (1975). Allowing the verdict to stand would not result in a miscarriage of justice. The trial court did not abuse its discretion by denying defendant's motion for a new trial. *Gadomski, supra*.

Affirmed.

/s/ Richard A. Bandstra  
/s/ William B. Murphy  
/s/ Christopher M. Murray