

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD CARL GREGORY, JR.,

Defendant-Appellant.

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UNPUBLISHED

October 14, 2004

No. 247844

Wayne Circuit Court

LC No. 02-013246-01

Before: Griffin, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

The trial court convicted defendant Richard Carl Gregory, Jr., of felonious assault<sup>1</sup> after a bench trial. The trial court sentenced defendant as a fourth habitual offender<sup>2</sup> to one year in jail. Defendant appeals his conviction and sentence, and we affirm.<sup>3</sup>

Defendant contends that the trial court erred when it failed to consider lesser included offenses. Defendant failed to preserve this issue by requesting that the trial court consider lesser included offenses. Therefore, review is precluded unless defendant demonstrates plain error that affected the outcome of the lower court proceedings. *People v Gonzalez*, 468 Mich 636, 642-643; 664 NW2d 159 (2003).

The victim testified that defendant produced a knife, held it up in the air, and threatened to stab him. The victim stated that he was scared. According to defendant, he was not armed with a knife and no altercation of the type described by the victim ever occurred. Given that defendant did not request that the court consider any lesser offenses and that a rational view of the evidence did not support a verdict of either an attempted felonious assault or a simple assault, defendant has failed to show plain error. Cf. *People v Silver*, 466 Mich 386, 388; 646 NW2d 150 (2002); *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002).

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<sup>1</sup> MCL 750.82.

<sup>2</sup> MCL 769.12.

<sup>3</sup> This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the evidence was insufficient to sustain the verdict or, in the alternative, he is entitled to a new trial because the verdict was against the great weight of the evidence. A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39; 642 NW2d 339 (2002). We review the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proven beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The trial court's factual findings are reviewed for clear error. A finding of fact is considered "clearly erroneous if, after a review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). "An appellate court will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses." *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

"Felony assault is defined as a simple assault aggravated by the use of a weapon." *People v Jones*, 443 Mich 88, 100; 504 NW2d 158 (1993). "The elements of felony assault are (1) an assault, (2) with a dangerous weapon, and (3) 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). "A simple assault is either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery." *People v Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996).

As noted above, the victim testified that defendant displayed a knife and threatened to stab him, causing him to become frightened. Such evidence was clearly sufficient to sustain the verdict. *Avant, supra* at 505-506; *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). Because the evidence was sufficient to support the verdict, defendant is not entitled to relief. *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003); *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999).

Affirmed.

/s/ Richard Allen Griffin  
/s/ Henry William Saad  
/s/ Peter D. O'Connell