

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARIO JAY ROYAL,

Defendant-Appellant.

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UNPUBLISHED

November 15, 2007

No. 272340

Wayne Circuit Court

LC No. 06-004656-01

Before: Talbot, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of assault with intent to do great bodily harm less than murder, MCL 750.84. Defendant was sentenced to 18 months to ten years' imprisonment. We affirm.

Defendant initially contends that his conviction is against the great weight of the evidence. We disagree. In order to prevail, defendant must show that the evidence preponderates so heavily against the verdict that to allow the verdict to stand would constitute a miscarriage of justice. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998).

To secure a conviction for assault with intent to do great bodily harm less than murder, the prosecutor must prove beyond a reasonable doubt that there was "(1) an attempt or offer with force or violence to do corporeal hurt to another (an assault), (2) coupled with an intent to do great bodily harm less than murder." *People v Lugo*, 214 Mich App 699, 710; 542 NW2d 921 (1995). "The term 'intent to do great bodily harm less than the crime of murder' has been defined as an intent to do serious injury of an aggravated nature." *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986). Furthermore, one can infer that a defendant intends the natural and probable consequences of his acts. *People v Henry*, 25 Mich App 45, 55; 181 NW2d 64 (1970).

Defendant's primary contention is that the testimony of Latoya Johnson, defendant's live-in girlfriend and the victim of his admitted assault, does not establish that his actions caused Johnson to jump through their closed, second story window, causing herself great bodily harm. In so arguing, defendant cites to his own testimony, which contradicts the testimony of Johnson.

In an appeal based on the great weight of the evidence, a court should rarely grant a new trial when the appeal is based on conflicting testimony or the questionable credibility of witness

testimony. *People v Lemmon*, 456 Mich 625, 643; 576 NW2d 129 (1998). Only where the testimony of a material witness is inherently implausible, incredible, defies physical reality or has been seriously impeached should a new trial be granted. *Id.* at 643-644. Issues of credibility should typically be decided by the finder of fact. *Id.* at 642-643.

Johnson's testimony regarding the circumstances surrounding her decision to jump from the window is not so implausible to require a new trial. Defendant acknowledges hitting Johnson numerous times. It is plausible that Johnson, feeling overpowered by defendant, did not believe she could access the doorway and felt that she had to escape the apartment by some alternative means to elude her attacker, even though this would require Johnson to place her own health and safety at risk. As a result, the trial court's finding that defendant is guilty of assault with intent to do great bodily harm less than murder is not against the great weight of the evidence.

Next, defendant argues that his conviction is not supported by sufficient evidence. We disagree. When deciding whether there was insufficient evidence to support a conviction, this Court reviews the record de novo. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). This Court analyzes the evidence in the light most favorable to the prosecution in order to determine whether a rational trier of fact could determine that the elements of the charged offense were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Defendant concedes that he assaulted Johnson. However, defendant denies the intent to cause great bodily harm and argues that Johnson jumping out of the closed window was not a foreseeable consequence of his intentional assault.

While Johnson and defendant presented differing explanations regarding the cause of Johnson falling from the window, the trial court was in a better position than this Court to assess the credibility of each witness. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). When viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude that Johnson suffered great bodily harm when she jumped through the closed window to escape defendant's intentional assault. In addition, it was a natural and foreseeable consequence of defendant's intentional act that Johnson would resort to such dangerous measures to avoid the ongoing assault. Therefore, sufficient evidence exists to sustain defendant's conviction.

Affirmed.

/s/ Michael J. Talbot  
/s/ E. Thomas Fitzgerald  
/s/ Kirsten Frank Kelly