

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMETRIUS JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

November 25, 2008

No. 280290

Wayne Circuit Court

LC No. 07-006540-01

Before: Murphy, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of assault with intent to do great bodily harm less than murder, MCL 750.84 and carrying or possessing a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to three to ten years' imprisonment for the assault conviction and to two years' imprisonment for the felony-firearm conviction. Because we conclude that there were no errors warranting a new trial, we affirm defendant's convictions. However, because the judgment of sentence erroneously indicates that defendant's sentence for felony-firearm is to be served concurrently with his sentence for assault,<sup>1</sup> we remand this case for correction of the clerical error.

On appeal, defendant argues that the prosecution failed to present sufficient evidence to prove the essential elements of assault with intent to do great bodily harm and to disprove self-defense beyond a reasonable doubt. For a sufficiency of the evidence claim, we review the evidence presented at trial de novo, in the light most favorable to the prosecution, to determine whether "any rational fact-finder could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Odom*, 276 Mich App 407, 418; 740 NW2d 557 (2007).

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<sup>1</sup> At sentencing, the trial court ordered the two-year mandatory sentence for the felony-firearm conviction to be served consecutive to the sentence for assault, but the Judgment of Sentence indicates that the sentence is to be served concurrent to the sentence for assault. There is no apparent explanation for this discrepancy. This is contrary to MCL 750.227b, which mandates a two-year consecutive sentence.

The elements of assault with intent to do great bodily harm are: “(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 Brown*, 267 Mich App 141,147; 703 NW2d 230 (2005) (emphasis in original). A well settled definition of great bodily harm is “serious injury of an aggravated nature.” *Id.*, quoting *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986).

At trial, there was evidence that defendant fought with the complainant, Johnny Brown, in defendant’s basement. At some point, defendant ran upstairs and got a gun. Defendant then went back down and shot Brown. Taken in the light most favorable to the prosecution, this evidence clearly established each of the elements of assault with the intent to do great bodily harm.

To establish self-defense, the defendant must have (1) believed that the complainant’s behavior created a threat of imminent danger or serious bodily injury, and (2) his belief must have been honest and reasonable. *People v Truong*, 218 Mich App 325, 337; 553 NW2d 692 (1996). “Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt.” *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

The initial fight took place in defendant’s house, and therefore, defendant had no duty to retreat under the “castle doctrine.” See *People v Riddle*, 467 Mich 116, 120-121; 649 NW2d 30, 35-36 (2002) (noting that “one who is attacked in his dwelling is *never* required to retreat where it is otherwise necessary to exercise deadly force in self-defense.”). Defendant makes much of the fact that Brown has a documented mental disorder, was intoxicated, and refused to leave. Nevertheless, there is evidence that, if believed, would indicate that defendant could not reasonably have considered Brown to be an imminent threat.

After ‘tussling’ or wrestling back and forth several times, defendant left Brown in the basement and went upstairs and retrieved a gun. Although in a place of comparative safety, he returned to confront Brown. There was also testimony that when defendant returned,<sup>2</sup> Brown had apparently turned his back and was about to leave when defendant shot him in the back of the legs—purportedly to “disarm” him. Further, although there was evidence in support of defendant’s contention that Brown was armed, there was also evidence that Brown was not armed.

Defendant testified that Brown pulled a gun on him and that Brown “had the gun in his coat” during the altercation. However, Brown testified that he never had a gun. Another witness also testified that Brown did not have a gun. That witness revealed on cross-examination that his previous statement, given to police officers regarding the events that took place on the night of the shooting, was based on his assumption that one of the two guns recovered from the scene of

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<sup>2</sup> When asked why he went back downstairs to confront Brown, defendant explained that he “had valuables” in the house and that the way Brown was acting, he thought Brown might be capable of doing “anything.”

the crime must have belonged to Brown. The jury was free to resolve this credibility dispute against defendant. *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007). Hence, there was sufficient evidence from which a jury could conclude beyond a reasonable doubt that defendant was not justified in shooting Brown.

There were no errors warranting a new trial.

Affirmed, but remanded for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Michael R. Smolenski