

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

OTIS LENEZ MOORE,

Defendant-Appellant.

UNPUBLISHED

January 5, 2010

No. 287171

Wayne Circuit Court

LC No. 08-005584-FC

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

Defendant appeals by right his bench-trial conviction of assault with a dangerous weapon (felonious assault), MCL 750.82. He was sentenced to 24 months' probation. We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

Defendant first argues that there was insufficient evidence to support his conviction of felonious assault. We disagree. When analyzing a claim based on insufficient evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 132; 600 NW2d 370 (1999). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). The same standard applies to review of a bench-trial conviction as to review of a jury-trial conviction. *People v Kanaan*, 278 Mich App 594, 618; 751 NW2d 57 (2008). Questions of credibility are for the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

The elements of felonious 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. MCL 750.82; *People v Chambers*, 277 Mich App 1, 8; 742 NW2d 610 (2007). An assault may consist of an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery. *People v Starks*, 473 Mich 227, 234; 701 NW2d 136 (2005). Criminal intent may be proven indirectly by reasonable inference from the conduct of the accused and the surrounding circumstances. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992); see also *People v Johnson*, 54 Mich App 303, 304; 220 NW2d 705 (1974).

In this case, sufficient evidence was presented to convict defendant of felonious assault. Michael Pizzimenti testified that defendant lunged at him with a knife. Based on this conduct of defendant, we conclude that there was sufficient evidence for the trial court to conclude that defendant had the requisite intent to injure or create the reasonable apprehension of a battery. Moreover, identification of defendant is not at issue. Defendant was located in the vicinity immediately following the incident and he fit the description given by Pizzimenti. Even if defendant was not wearing a bandana at the time of the arrest, he had one in his backpack at the time. Finally, Pizzimenti identified defendant in a lineup as the man who assaulted him. The crux of defendant's appeal is based on the credibility of the witnesses. But we generally defer to the trier of fact on questions of credibility. *Avant, supra* at 506. The trial court found defendant's testimony incredible. Defendant's testimony was the only evidence that contradicted Pizzimenti's account of the assault. Therefore, viewing the evidence in the light most favorable to the prosecution, we conclude that there was sufficient evidence to find defendant guilty beyond a reasonable doubt of felonious assault.

Defendant also argues that the verdict was against the great weight of the evidence. We disagree. A verdict is against the great weight of the evidence only if the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998). "Conflicting testimony and questions of witness credibility are generally insufficient grounds for granting a new trial." *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008).

The evidence in this case does not preponderate so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. The prosecution presented credible evidence through the testimony of Pizzimenti, as well as that of Detroit police officers Keays and Coleman, to support its theory that defendant committed a felonious assault. Pizzimenti and Keays testified that defendant was in the area on the day in question. Pizzimenti testified that defendant lunged at him with a knife. Pizzimenti further testified that he and defendant wrestled and Pizzimenti was able to get hold of the knife and provide it to the police. In particular, Pizzimenti's account of what defendant was wearing—a camouflage jacket and a red bandana—led to defendant's quick identification and arrest and was corroborated by Keays. Indeed, we note that defendant, himself, admitted that he was in the area at the time of the incident and that he was wearing camouflage and had a red bandana. The only evidence contradicting the prosecution's theory of the crime was defendant's remaining testimony, which the trial court found incredible. In general, conflicting testimony and issues of witness credibility are not enough to set aside a verdict. *Unger, supra* at 232. We conclude that the evidence did not preponderate so heavily against the verdict to justify a new trial in this case.

Affirmed.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Brian K. Zahra