

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

March 12, 1999

Plaintiff-Appellee,

v

No. 206362

Recorder's Court

ENRIQUE RAMIREZ,

LC No. 96-006006

Defendant-Appellant.

Before: Talbot, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Defendant was charged with assault with intent to rob while armed, MCL 750.89; MSA 28.284, and assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. Following a bench trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. Defendant was sentenced to two to ten years' imprisonment. Defendant appeals as of right, and we affirm.

At trial, the victim testified that defendant attacked him in a drunken rage. In contrast, defendant testified that the victim was the aggressor.

On appeal, defendant first argues that the trial court's findings of fact were clearly erroneous. We disagree. Findings of fact may not be set aside unless clearly erroneous. MCR 2.613(C); MCR 6.001(D). A finding is clearly erroneous if, after 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).

Here, defendant challenges the trial court's finding that defendant was the aggressor by pointing to several discrepancies (most of them collateral and inconsequential) in the testimony of the witnesses, and the "implausibility" of the testimony of the victim. The trial court determined that the testimony of the victim was more credible than that of defendant. Issues of credibility are for the trier of fact to resolve. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). Moreover, our review of the record reveals ample, plausible evidence in support of the trial court's finding. Accordingly, we are not left with a definite and firm conviction that a mistake has been made.

Defendant next argues that the evidence was insufficient to support defendant's conviction. We disagree. When reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of assault with intent to do great bodily harm less than murder are (1) an assault, i.e., 'an attempt or offer with force and violence to do corporal hurt to another' coupled with (2) a specific intent to do great bodily harm less than murder. *People v Bailey*, 451 Mich 657, 668-669; 549 NW2d 325 (1996). Viewed in a light most favorable to the prosecution, the victim's testimony that defendant struck him with bottles, bit him, and threatened him with cheese blades was sufficient to establish an assault. As to the second element, intent is a question of fact to be inferred from the circumstances by the trier of fact. *People v Kieronski*, 214 Mich App 222, 232; 542 NW2d 339 (1995). One could infer that defendant intended great bodily harm from the facts of the assault. Accordingly, we hold that the prosecution presented sufficient evidence of assault with intent to do great bodily harm less than murder.

Finally, defendant argues that the verdict was against the great weight of the evidence. We disagree. "A new trial based upon the weight of the evidence should be granted only where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result." *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). Here, the evidence did not preponderate heavily against the verdict, but rather, hinged on the trier of fact's assessment of credibility which was resolved in favor of the victim. Therefore, the verdict was not against the great weight of the evidence.

Affirmed.

/s/ Janet T. Neff
/s/ Michael R. Smolenski
/s/ Michael J. Talbot