

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NATHAN MONTAGUE,

Defendant-Appellant.

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UNPUBLISHED

April 22, 2003

No. 232314

Clinton Circuit Court

LC No. 00-006837-FC

Before: Talbot, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Defendant, originally charged with murder in the second degree, MCL 750.317, was convicted, following a jury trial, of assault with intent to do great bodily harm less than the crime of murder, MCL 750.84. He was sentenced to four and one-half to ten years in prison. He now appeals and we reverse.

Defendant raises a number of issues, one of which is dispositive. Defendant argues that the trial court erred in granting the prosecutor's request, over defendant's objection, to instruct the jury on assault with intent to do great bodily harm, the offense for which he was ultimately convicted. We agree. Assault with intent to do great bodily harm is a cognate lesser-included offense to second-degree murder. *People v Bailey*, 451 Mich 657, 669; 549 NW2d 325 (1996). The Supreme Court recently held that it is not permissible to give an instruction on a cognate lesser-included offense. *People v Cornell*, 466 Mich 335, 359; 646 NW2d 127 (2002); *People v Reese*, 466 Mich 440, 446; 647 NW2d 498 (2002); see also *People v Alter*, 255 Mich App \_\_; \_\_ NW2d \_\_ (No. 228005, issued 1/24/03), slip op at 3-4. Therefore, the trial court erred in instructing the jury on assault with intent to commit great bodily harm when the only crime charged in the information was second-degree murder.

In light of our disposition of the above issue, it is unnecessary to address defendant's remaining issues.

Reversed.

/s/ Michael J. Talbot

/s/ David H. Sawyer

/s/ Peter D. O'Connell