

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH EARL RICHARDSON,

Defendant-Appellant.

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UNPUBLISHED

June 3, 2004

No. 245090

Wayne Circuit Court

LC No. 02-006725

Before: Markey, P.J., and Wilder and Meter, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214 (E).

Defendant argues that the verdict was against the great weight of the evidence or, in the alternative, that insufficient evidence supported the verdict. We disagree. A new trial may be granted on some or all of the issues if a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e). The test is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Gadowski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). If the evidence conflicts, the issue of credibility ordinarily should be left for the trier of fact. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998). In a case tried without a jury, a motion for new trial is not required to preserve the issue. MCR 7.211(C)(1)(c).

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. The trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

The elements of felonious assault are: (1) an assault; (2) with a dangerous weapon; and (3) with the intent to place the victim in reasonable apprehension of an immediate battery. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). An assault is an attempt to commit a battery or an unlawful act that places another person in reasonable apprehension of receiving

an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). The defendant's intent can be inferred from the circumstances. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992).

Complainant testified that defendant fired two shots in her direction when she was approximately two car lengths from him. The trial court was entitled to find complainant's testimony in this regard credible. *Lemmon, supra*; *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). The trial court's finding that defendant fired shots in complainant's direction, coupled with the permissible inference that defendant intended to place complainant in fear of receiving an immediate battery, was sufficient to support defendant's convictions. *Petrella, supra*; *Davis, supra*; *Lawton, supra*. Defendant is not entitled to a new trial. *Gadomski, supra*.

Affirmed.

/s/ Jane E. Markey  
/s/ Kurtis T. Wilder  
/s/ Patrick M. Meter