

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DWIGHT T. SAMUELS,

Defendant-Appellant.

UNPUBLISHED

June 10, 2004

No. 246806

Wayne Circuit Court

LC No. 02-008848

Before: Sawyer, P.J., and Gage and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of felonious assault, MCL 750.82, assault and battery, MCL 750.81, and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

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 Gadomski*, 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). An objection going to the great weight of the evidence can be raised only by a motion for a new trial before the trial court. *People v Bradshaw*, 165 Mich App 562, 565; 419 NW2d 33 (1988). Failure to raise the issue by an appropriate motion waives the issue on appeal, *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997), but the issue may be considered if the failure to do so would result in a miscarriage of justice. *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999).

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002).

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 receiving 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 offense of assault and battery consists of an assault, *id.*, and a battery, which is the consummation of an assault. Intent is an element of the offense. The lack of physical injury is irrelevant. *People v Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996). The elements of felony-firearm are: (1) the possession of a firearm; (2) during the commission of, or the attempt to commit, a felony. MCL 750.227b.

Defendant argues that the verdicts were against the great weight of the evidence or, in the alternative, that insufficient evidence was produced to support the verdicts. We disagree and affirm defendant's convictions. Defendant did not move for a new trial in the trial court; therefore, his argument that the verdicts were against the great weight of the evidence is not properly preserved for appeal. *Winters, supra; Bradshaw, supra*. Complainant Anderson testified that defendant produced a gun and struck him several times, and complainant Graham testified that defendant struck him one time. The jury was entitled to accept this testimony as credible, notwithstanding the fact that other witnesses gave contradictory testimony. *Lemmon, supra; Milstead, supra*. The testimony given by complainants established the elements of felonious assault, assault and battery, and felony-firearm. The evidence did not preponderate so heavily against the verdicts that it would be a miscarriage of justice to allow the verdicts to stand, *Gadomski, supra; Noble, supra*, and, when viewed in a light most favorable to the prosecution, was sufficient to support the verdicts. *Wolfe, supra*.

Affirmed.

/s/ David H. Sawyer

/s/ Hilda R. Gage

/s/ Donald S. Owens