

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JONAH MOORE,

Defendant-Appellant.

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UNPUBLISHED

November 21, 2006

No. 263856

Wayne Circuit Court

LC No. 05-001865-01

Before: White, P.J. and Zahra and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for assault with intent to do great bodily harm less than murder, MCL 750.84. Defendant was sentenced to one to ten years in prison. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted for deliberately driving a forklift (“the hi-lo”) into a red Ford pickup truck (“the truck”) occupied by the victim, Larry Henderson, on Russell Street in Eastern Market in Detroit. Henderson described the driver of the hi-lo to officers who responded at the scene and later gave a positive identification of defendant as the driver. On appeal, defendant argues that there was insufficient evidence to identify him as the driver of the hi-lo. We disagree.

When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). This Court reviews the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

A conviction for assault with intent to do great bodily harm less than murder, MCL 750.84, requires proof of: “(1) an attempt of threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder.” *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). An intent to do great bodily harm less than murder has been defined as “an intent to do serious injury of an aggravated nature,” *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986), citing *People v Ochotski*, 115 Mich 601, 608; 73 NW 889 (1898), and can be inferred from the defendant’s conduct, *Parcha*, *supra* at 239.

In the present case, the evidence supports the inference that defendant intended to do serious injury to Henderson. Henderson testified that defendant drove the hi-lo directly at the truck, with the forks raised, while Henderson was seated in the driver's seat. The forks of the hi-lo came into the truck bed, punctured a hole in the middle of the driver's door, and reached about "a half a foot" from Henderson's body before Henderson was able to move away to the passenger seat. The intent to do great bodily harm less than murder can be inferred from the hi-lo driver's placement of the forks at the truck driver's door while Henderson was seated there. The evidence is sufficient to satisfy the elements of the crime, showing that defendant intended to do great bodily harm to Henderson.

Defendant's primary argument on appeal is that the prosecution failed to identify defendant as the driver of the hi-lo. However, positive identification by witnesses may be sufficient to support a conviction of a crime. *Davis, supra* at 700. In this case, Henderson's positive identification of defendant as the driver of the hi-lo provides sufficient evidence to identify defendant as the driver. While defendant appears to challenge Henderson's credibility as a witness by contending that the excitement of the collision makes his testimony inaccurate, the credibility of Henderson's identification testimony is to be determined by the trier of fact. *Id.* Moreover, we note that the circumstances of the collision may have led the jury to conclude that Henderson's identification testimony was accurate. Henderson testified that he had seen defendant at Eastern Market a few times prior to the date of the collision. The collision happened about 1:00 p.m., during daylight, and Henderson, who was three or four feet from the hi-lo driver during the collision, attested that he was able to see the driver's face. Furthermore, he described the hi-lo driver as 50 years old, five feet eight inches tall, weighing 250 pounds, and named "Jonas," to police soon after the collision. Henderson's description closely matched defendant's actual description, which was 49 years old, five feet nine inches tall, weighing 210 pounds, and named "Jonah."

Finally, defendant argues that defendant's witnesses, who provide evidence of his innocence, should be believed because their testimony was not shown to be false. However, the prosecutor need not negate every reasonable theory consistent with innocence, rather it must merely introduce evidence sufficient to convince a reasonable jury in the face of whatever contradictory evidence the defendant may provide. *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995). Furthermore, the jury decides the weight and credibility to be given to witness testimony. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992). As a result, the jury weighs Henderson's identification testimony against the testimony of defendant's acquaintance, which places defendant in a shed across the street during the collision, and the testimony of defendant's employer, which shows defendant was using pallet jacks, hand carts or "Larry's" during the collision because the employer's hi-lo was not working. Therefore, viewed in the light most favorable to the prosecution, there is sufficient evidence to identify defendant as the driver of the hi-lo and to convict him of assault with intent to do great bodily harm less than murder.

Affirmed.

/s/ Helene N. White  
/s/ Brian K. Zahra  
/s/ Kirsten Frank Kelly