

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY GEISE,

Defendant-Appellant.

UNPUBLISHED

October 23, 2008

No. 280814

Wayne Circuit Court

LC No. 07-004746-01

Before: Servitto, P.J., and Donofrio and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of felonious assault. MCL 750.82. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to 3 to 15 years' imprisonment, and he appeals as of right. We affirm.

The facts presented at trial establish that defendant and an acquaintance, Timothy Sparks, attacked the victim. During the altercation, defendant struck the victim "approximately three times" with an object on the left side of the head before defendant and the victim fell off of the victim's porch into the yard, which contained a garden rock and a birdbath. Defendant and Sparks left the victim in the yard bleeding from the side of his head. The victim received approximately 22 stitches for head lacerations. Defendant argues that the verdict was against the great weight of the evidence or there was insufficient evidence to sustain a conviction for felonious assault with a dangerous weapon where the victim provided inconsistent testimony that raises doubt about whether a dangerous weapon was used during the attack, and reasonable doubt regarding whether it was defendant, as opposed to the objects on the ground in the yard, that caused the victim's injuries.

While a new trial may be granted if a verdict is found to be against the great weight of the evidence, a new trial should be granted only when "the evidence preponderates heavily against the verdict" and a "serious miscarriage of justice" would result if a new trial was not awarded. *People v Lemmon*, 456 Mich 625, 639, 642; 576 NW2d 129 (1998). Where, as here, a great weight of the evidence argument is based on conflicting evidence, the question of credibility ordinarily should be left for the factfinder. *Lemmon, supra* at 642-643. Only where the evidence relied upon for conviction is deprived of all probative value or contradicts indisputable physical facts or defies physical realities is a new trial warranted based on contradictory evidence. *Lemmon, supra* at 646-647. Additionally, the trial court's factual findings in a bench trial will not be reversed unless clearly erroneous. A finding is clearly erroneous where, although there is

evidence to support it, the reviewing court is firmly convinced that a mistake has been made. *People v United States Currency*, 164 Mich App 171, 179; 416 NW2d 700 (1987). Further, the standard of review for a sufficiency of the evidence claim is de novo, and this Court must review “the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). This is a highly deferential standard of review; it requires the reviewing court to respect the trier of fact’s determinations regarding proper inferences that may be drawn from the evidence and to determine the weight to give those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Evidentiary conflicts must be resolved in favor of the prosecution. *People v Fletcher*, 260 Mich App 531, 562; 679 NW2d 127 (2004).

MCL 750.82 provides in relevant part:

(1) Except as provided in subsection (2), a person who assaults another person with a gun, revolver, pistol, knife, iron bar, club, brass knuckles, or other dangerous weapon without intending to commit murder or to inflict great bodily harm less than murder is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00 or both.

The elements of felonious assault are 1) an assault, 2) with a dangerous weapon, and 3) with intent to injure or place a victim in reasonable fear of a battery. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992). Objects that are not specifically listed in the statute as dangerous may be deemed dangerous within the meaning of the statute if they are used in a manner that may endanger life or inflict great bodily harm. See *People v Buford*, 69 Mich App 27, 30; 244 NW2d 351 (1976), and *People v Knapp*, 34 Mich App 325, 333; 191 NW2d 155 (1971).

The evidence was clearly sufficient to support the verdict. The testimony of the victim, and the physical evidence of injury established that an assault took place. The undisputed testimony of the victim was that defendant and Sparks ambushed the victim on his front porch and hit him with an object on the left side of his head. While the victim was unclear as to the nature of the object, he consistently testified that defendant hit him with an object during the assault; it is immaterial for the purposes of MCL 750.82 if it is definitely established at trial that the object was a rock. The statute’s definition of “other dangerous weapon” is inclusive and may include a “pin” or a “rock” so long as the object is used in a manner that may endanger life or inflict great bodily harm. *Buford, supra*; *Knapp, supra*. The trial court deemed the victim’s testimony to be credible and the inconsistencies argued by defendant on appeal do not rise to the standard established in *Lemmon, supra* at 646-647, as they do not “deprive” the victim’s testimony of “all probative value...contradict indisputable physical facts or” defy “physical realities.” When the evidence is reviewed in a light most favorable to the prosecution, it clearly establishes the elements of felonious assault beyond a reasonable doubt, and the verdict was not

against the great weight of the evidence.

Affirmed.

/s/ Deborah A. Servitto

/s/ Pat M. Donofrio

/s/ Karen M. Fort Hood