

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
October 23, 2012

v

TAMIKA JAMIL DANIELS,
Defendant-Appellant.

No. 302808
Wayne Circuit Court
LC No. 10-004123-FH

Before: K. F. KELLY, P.J., and MARKEY and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial conviction of assault with intent to do great bodily harm less than murder, MCL 750.84. Defendant was sentenced to 50 months to 10 years' imprisonment for the conviction, to be served consecutive to the sentence she was serving at the time of the incident. We affirm.

At the time of the instant offense, defendant was an inmate at Scotts Correctional Facility. On December 23, 2008, defendant approached another inmate and cut her in the face with a razor. The victim was walking back toward her cell, bleeding profusely and crying when a staff member saw her and called her over. The victim reported to the staff that defendant had cut her. The victim was transported to the hospital, where she nearly lost her eye and required a significant number of stitches.

Defendant first argues that the jury's verdict was against the great weight of the evidence and that the trial court thus erred in denying defendant's motion for a new trial. We disagree.

A trial court's decision to grant or deny a motion for a new trial on the ground that the verdict was against the great weight of the evidence is reviewed for an abuse of discretion. *People v Lacalamita*, 286 Mich App 467, 469; 780 NW2d 311 (2009). "An abuse of discretion occurs when a trial court chooses an outcome falling outside the range of reasonable and principled outcomes." *Id.*

"The test to determine whether a verdict is against the great weight of the evidence is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *Id.* at 469. Furthermore, "if the evidence is nearly balanced or is such that different minds would naturally and fairly come to different

conclusions,” the trial court may not disturb the jury’s verdict. *People v Lemmon*, 456 Mich 625, 644; 576 NW2d 129 (1998)(internal citations omitted).

“The elements of assault with intent to do great bodily harm less than murder are (1) an assault, i.e., ‘an attempt or offer with force and violence to do corporal hurt to another’ coupled with (2) a specific intent to do great bodily harm less than murder.” *People v Bailey*, 451 Mich 657, 668-669; 549 NW2d 325 (1996), quoting *People v Smith*, 217 Mich 669, 673; 187 NW 304 (1922). “Assault with intent to do great bodily harm less than murder is a specific intent crime.” *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). “The term ‘intent to do great bodily harm less than the crime of 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), quoting *People v Ochotski*, 115 Mich 601, 608; 73 NW 889 (1898). Our “Supreme Court held that the specific intent necessary to constitute the offense of assault with intent to do great bodily harm less than murder could be found in conduct as well as words.” *People v Jackson*, 25 Mich App 596, 598; 181 NW2d 794 (1970).

During trial, several witnesses testified that defendant and the victim had a romantic relationship. The victim’s cell mate stated that earlier on the date of the incident, during an inmate count in which inmates are supposed to be located in their own cell, defendant attempted to get into the victim’s cell while it was locked. Another inmate testified that she heard defendant threaten to beat the victim up if the victim ever left defendant. An inmate also said that she witnessed defendant strike the victim in the face at the time of the incident, and then saw the victim’s face bleeding. Two correctional facility officers testified that while they did not observe the incident as it occurred, they observed the victim bleeding from the face immediately afterward. According to two staff members, when they asked the victim immediately after the incident who had done this to her face, she responded that defendant had cut her.

It is true that conflicting evidence was given by multiple inmates, including the victim, regarding whether defendant was the attacker and several witnesses testified that their prior testimony and reports to staff members at the correctional facility were lies. The victim testified at trial that she had a coat over her head and did not see who attacked her, but that defendant was not her attacker. The victim, however, identified defendant on two separate occasions as the assailant before trial. Generally, “conflicting testimony or a question as to the credibility of a witness are not sufficient grounds for granting a new trial.” *Lemmon*, 456 Mich at 643. Further, the resolution of credibility questions, when dealing with conflicting testimony, “is within the exclusive province of the jury.” *Lacalamita*, 286 Mich App at 470. There was sufficient evidence to conclude that defendant was the attacker. And, because the evidence was reasonably balanced and the jury’s verdict is not against the great weight of the evidence, the trial court did not abuse its discretion in denying defendant’s motion for a new trial.

Defendant next argues that the trial court erred in scoring 10 points for Offense Variable (“OV”) 4 because there was insufficient evidence to show that the victim suffered psychological harm that may require treatment as a result of this incident. We disagree.

This Court reviews “a trial court’s scoring decision for an abuse of discretion to determine whether the evidence adequately supports a particular score.” *People v Apgar*, 264

Mich App 321, 329; 690 NW2d 312 (2004). “Scoring decisions for which there is any evidence in support will be upheld.” *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006).

In scoring OV 4, 10 points should be assessed if the victim suffers a serious psychological injury that may require professional treatment. *People v Wilkens*, 267 Mich App 728, 740; 705 NW2d 728 (2005); MCL 777.34. The fact that treatment is not sought is not conclusive when scoring the variable. MCL 777.34(2).

At trial, the victim claimed that her previous admissions that defendant was her attacker were false, all while acting capricious on the stand. The victim’s demeanor and overzealous attitude toward defendant are depictive characteristics of many domestic and sexual violence victims, which may require the victim to seek professional help. As numerous courts and commentators have observed, victims of domestic violence often recant or minimize what they have previously stated with regard to the abuser’s actions. See, e.g., *Commonwealth v DiMonte*, 427 Mass 233, 244; 692 NE2d 45 (1998). From the victim’s abrupt change of story and demeanor, it is reasonable the trial court concluded that the victim *may* require psychological treatment as a result of this incident.

Further, according to the Presentence Investigation Report, the victim was seeing a therapist on a biweekly basis and taking antidepressant medication. While it is not clear whether the treatment was as a result of the incident, it lends support to the trial court’s conclusion. “A presentence report is presumed to be accurate and may be relied on by the trial court unless effectively challenged by the defendant.” *People v Callon*, 256 Mich App 312, 334; 662 NW2d 501 (2003). Thus, it is reasonable to assume the trial court relied on this information when scoring 10 points for OV 4.

In any event, even if OV 4 were incorrectly scored at 10 points, an erroneous assessment of points under one offense variable of the sentencing guidelines which would not, when corrected, result in a different recommended range does not require resentencing. *People v Jackson*, 291 Mich App 644, 649; 805 NW2d 463 (2011). If OV 4 were scored at 0 points, it would not change the guidelines range. Thus, resentencing would not be required.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Jane E. Markey
/s/ Deborah A. Servitto