

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES WILLIAM LYONS,

Defendant-Appellant.

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UNPUBLISHED

February 14, 2006

No. 257518

Wayne Circuit Court

LC No. 04-001861-01

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of first-degree home invasion, MCL 750.11a(2), assault and battery, MCL 750.81, and unlawfully driving away an automobile (UDAA), MCL 750.413. Defendant was sentenced to concurrent terms of 2 ½ years to 20 years' imprisonment for the first-degree home invasion conviction, 30 days' imprisonment for the assault and battery conviction and one to five years' imprisonment for the UDAA conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is that his convictions for first-degree home invasion and UDAA are against the great weight of the evidence. 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). Determining whether a verdict is against the great weight of the evidence requires a review of the entire body of proofs. 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).

The first-degree home invasion statute, MCL 750.110a(2), provides:

A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree

if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists:

(a) The person is armed with a dangerous weapon.

(b) Another person is lawfully present in the dwelling.

The elements of first-degree home invasion applicable to the present case are that defendant (1) broke and entered the dwelling or entered the dwelling without permission, (2) committed the offense of assault while present in the dwelling and (3) another person was lawfully in the dwelling. MCL 750.110a(2); *People v Sands*, 261 Mich App 158, 162; 680 NW2d 500 (2004). An assault is “either an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery.” *People v Reeves*, 458 Mich 236, 240; 580 NW2d 433 (1998) (internal citations omitted). The defendant’s intent can be inferred from the circumstances. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992).

The elements of UDAA are: “(1) possession of a vehicle, (2) driving the vehicle away, (3) that the act is done wilfully, and (4) the possession and driving away must be done without authority or permission.” *People v Hendricks*, 200 Mich App 68, 71; 503 NW2d 689 (1993), aff’d 446 Mich 435 (1994). An intent to permanently deprive the owner of the automobile is not required to be guilty of UDAA, rather the unauthorized use of the vehicle may be done “wilfully” or “wilfully and wantonly.” *People v Hendricks*, 446 Mich 435, 449; 521 NW2d 546 (1994).

With regard to defendant’s first-degree home invasion conviction, defendant was seen breaking down the door to gain entry into Freeman’s house. Additionally, defendant did not have permission to enter the house. When defendant broke in, both Folson and Freeman were lawfully inside the house. Defendant approached Folson and Freeman and assaulted them both by striking them. With regard to defendant’s UDAA conviction, defendant was seen running from the house and driving away Folson’s truck shortly after the assault on Folson and Freeman. Defendant was not granted Folson’s permission to drive or possess the truck. The truck was later found by the Highland Park Fire Department crashed into a building.

Defendant offered testimony denying that he assaulted either Folson or Freeman and denying he took Folson’s truck. Defendant’s argues that the eyewitness testimony of Folson and Freeman should be discredited in favor of his own. The trial court was entitled to accept the testimony offered by the Folson and Freeman and disbelieve that of defendant. *Lemmon, supra* at 643-644. Conflicting testimony, even when impeached to some extent, is not a sufficient ground for granting a new trial. *People v McCray*, 245 Mich App 631, 638; 630 NW2d 633 (2001), quoting *Lemmon, supra* at 647. The evidence establishing that defendant was guilty of first-degree home invasion and UDAA did not preponderate so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *Gadomski, supra* at 28.

Affirmed.

/s/ Stephen L. Borrello  
/s/ David H. Sawyer  
/s/ E. Thomas Fitzgerald