

Order

Michigan Supreme Court
Lansing, Michigan

February 6, 2013

Robert P. Young, Jr.,
Chief Justice

146238

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

v

SC: 146238
COA: 305107
Wayne CC: 11-002420-FH

JAMES MICHAEL GEIERMAN,
Defendant-Appellee.

On order of the Court, the application for leave to appeal the September 18, 2012 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REVERSE, in part, the judgment of the Court of Appeals and REINSTATE the defendant's conviction for felonious assault because the evidence was sufficient to sustain his conviction for that offense. The defendant broke into a home, threatened to strike the occupants with what appeared to be a small bat or club, and thus attempted "to commit a battery or [committed] an unlawful act that place[d] another in reasonable apprehension of receiving an immediate battery." *People v Nickens*, 470 Mich 622, 628 (2004) (quotation marks and citations omitted). The Court of Appeals is required to view the evidence in a light most favorable to the prosecution. It was not empowered to substitute its judgment for that of the circuit court. *People v Wolfe*, 440 Mich 508, 515-516 (1992).



s0130

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 6, 2013

Corbin R. Davis

Clerk