STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONYAIL LUMAS,

Defendant-Appellant.

UNPUBLISHED
June 21, 1996

No. 177245
LC No. 93-007409

Before: Neff, P.J., and Jansen and G.C. Steeh III,* JJ.

PER CURIAM.

Following a jury trial in the Detroit Recorder's Court, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797, and unlawfully driving away an automobile (UDAA), MCL 750.413; MSA 28.645. He was thereafter sentenced to concurrent terms of seven to fifteen years' imprisonment and two to five years respectively. Defendant appeals as of right and we affirm.

The incident in this case, a "carjacking," occurred on June 18, 1993, at approximately 7:30 a.m. in the City of Detroit. The complainant, Lisa Patterson, stopped at a gas station to put air in one of her car tires. She left the keys in the ignition and her purse was on the back seat of the car. As Patterson got back into the car, defendant ran toward her with a gun, pointed the gun toward her, and told her to get out of the car, and pulled her away from the car. Defendant then drove off with the car. Defendant presented an alibi defense in this case. His wife testified that defendant was with her in bed at her sister's house until almost noon on June 18.

Defendant now raises three issues on appeal. He claims that his convictions of armed robbery and UDAA violate the prohibition against double jeopardy, that there was insufficient evidence presented to sustain his conviction of armed robbery, and that Offense Variable (OV) 17 was improperly scored. We do not find any issue to require reversal.

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* Circuit judge, sitting on the Court of Appeals by assignment.

I

Defendant first claims that the prohibition against double jeopardy was violated where he was convicted of both armed robbery and UDAA where the car was the subject of the armed robbery. However, defendant's argument must fail because this Court has recently held that the constitutional prohibition against double jeopardy is not violated for a conviction of both armed robbery and UDAA where the only property taken is the automobile. *People v Hurst,* 205 Mich App 634, 639; 517 NW2d 858 (1994); accord *People v Piotrowski,* 211 Mich App 527, 530; 536 NW2d 293 (1995).

II

Defendant next contends that he was deprived of due process where he was convicted of armed robbery under an information that charged him with stealing an automobile and a purse, but there was no evidence at trial that defendant intended to steal the purse. Defendant thus contends that the evidence was insufficient to sustain his conviction of armed robbery.

In this case, the prosecutor charged defendant in the information with armed robbery and charged the commission of the crime by two means; that is, by stealing a car *and* a purse. Defendant claims that there was insufficient evidence that he intended to steal the purse. Armed robbery is a specific intent crime, *People v Flowers,* 186 Mich App 652, 654; 465 NW2d 43 (1990), and requires that at the time that the defendant took the property, the defendant intended to take the property from the complainant permanently. CJI2d 18.1(7).

Even assuming that there was no evidence presented that defendant intended to steal the purse as well as the car (although it is clear that defendant intended to steal the car and everything that was in it since he drove it off after pointing a gun at the complainant), we need not vacate defendant's conviction of armed robbery. Where a prosecutor charges commission of a crime by two conjunctive means (here, stealing a car and a purse) and sufficient evidence is presented to support only one of the two means (here, stealing the car), a resulting guilty verdict need not be set aside, even where it is impossible to determine which of the two means the jury relied upon in reaching its verdict, as long as there was sufficient evidence of one of the two means. *Griffin v United States,* 502 US 46; 112 S Ct 466; 116 L Ed 2d 371 (1991). In this case, taken in a light most favorable to the prosecution, there was sufficient evidence that defendant committed an armed robbery by stealing a car at gunpoint, as was established by the testimony of the complainant. *People v Turner,* 213 Mich App 558, 565, 569; 540 NW2d 728 (1995).

III

Last, defendant argues that OV 17 (aggregate value of property obtained, damaged, or destroyed) was improperly scored at ten points (value of over $5,000). The car involved was a 1989 Dodge Daytona. However, we find that this issue was not preserved for appellate review because defendant did not comply with the requirements of MCR 6.429(C)[1]. *People v*

Kaczorowski, 190 Mich App 165, 173; 475 NW2d 861 (1991); see also *People v Hernandez,* 443 Mich 1; 503 NW2d 629 (1993).

Affirmed.

/s/ Janet T. Neff
/s/ Kathleen Jansen
/s/ George C. Steeh III

[1] MCR 6.429(C) has been recently amended, effective April 1, 1996, which changes somewhat the manner in which a defendant must preserve for appellate review an issue concerning the sentencing guidelines. Because defendant was sentenced on June 27, 1994, we follow the mandates of the court rule as it existed at that time.