

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALAN JEFFREY DANDRON, a/k/a ALAN  
JEFFERY DANDRON,

Defendant-Appellant.

---

UNPUBLISHED

September 27, 1996

No. 185275

LC No. 94-006551-FH

Before: Wahls, P.J., and Fitzgerald and L.P. Borrello,\* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and was sentenced to a prison term of 80 to 240 months. Defendant appeals as of right. We reverse and remand for a new trial.

We agree with defendant's argument that the trial court abused its discretion by denying defendant's request to instruct the jury on the lesser misdemeanor offenses of assault and battery and aggravated assault. Four conditions must be met before a defendant is entitled to an instruction on lesser misdemeanor offenses: (1) a proper request must be made and the defendant must inform the trial court of exactly which lesser offenses are requested; (2) an appropriate relationship must exist between the charged offense and the requested misdemeanor; that is, they must relate to protection of the same interests and be so related that proof of the lesser offense is necessarily presented as part of showing the greater offense; (3) the requested misdemeanor must be supported by a rational view of the evidence; that is, the element(s) differentiating the charged offense and the misdemeanor must be sufficiently in dispute for the jury to consistently acquit the defendant of the greater offense, but convict of the lesser; and (4) the instruction must not result in undue confusion or some other injustice. *People v Steele*, 429 Mich 13, 19-22; 412 NW2d 206 (1987); *People v Stephens*, 416 Mich 252; 330 NW2d 675 (1982).

---

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

All four conditions were met in this case. Although defendant did not request the misdemeanor instructions until after the close of proofs, the request, which concerned a fundamental matter, was timely. *People v Moore*, 39 Mich App 329, 335; 197 NW2d 533 (1972). An appropriate relationship for purposes of giving a lesser offense instruction exists between assault with intent to do great bodily harm and simple assault - both relate to the same interest of protecting people from corporal harm. *People v Smith*, 143 Mich App 122, 130-131; 371 NW2d 496 (1985). Similarly, an appropriate relationship exists between assault with intent to do great bodily harm and the misdemeanors of assault and battery and aggravated assault. These misdemeanors would often be established in the general nature of a case involving an alleged assault with intent to do great bodily harm. A jury could have rationally convicted defendant of assault and battery if it believed his testimony that he had struck the victim twice in the circumstances he described. The jury could also have rationally convicted defendant of aggravated assault if it further concluded that defendant had, in fact, inflicted serious or aggravated harm on the victim based on the evidence of her injuries. Instructions on these two lesser misdemeanors, which protected substantially the same interests as the charged offenses, would not have caused undue confusion or other injustice. Cf. *People v Taylor*, 195 Mich App 57, 62; 489 NW2d 99 (1992). Accordingly, we conclude that the trial court abused its discretion by failing to give the requested misdemeanor instructions.

In light of our conclusion, we need not reach the remainder of the issues raised by defendant. We note, however, that we have reviewed the allegations of error and find them to be without merit.

Reversed and remanded for a new trial.

/s/ Myron H. Wahls

/s/ E. Thomas Fitzgerald

/s/ Leopold P. Borrello