

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NICHOLAS OMAR LABARRIE,

Defendant-Appellant.

UNPUBLISHED
October 15, 1996

No. 184534
LC No. 94-008042

Before: Marilyn Kelly, P.J., and MacKenzie and J.R. Ernst*, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for unarmed robbery, MCL 750.530; MSA 28.798, assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, unlawfully driving away an automobile, MCL 750.413; MSA 28.645, and fleeing and eluding, MCL 750.479a; MSA 28.747(1). Defendant was sentenced to nine to fifteen years on the unarmed robbery conviction, five to ten years on the assault conviction, one to five years on the UDAA conviction, and thirty days to one year on the fleeing and eluding conviction, to be served concurrently. The trial court then set aside the sentence on the unarmed robbery conviction and enhanced defendant's sentence, as an habitual offender pursuant to MCL 769.13; MSA 28.1085, to fifteen to thirty years' imprisonment, with the other sentences remaining the same, such that they would be served concurrently with the enhanced sentence¹. We affirm defendant's convictions and remand for the limited purpose of entering a corrected Order of Conviction and Sentence and Judgment of Sentence.

Defendant first argues that his conviction for assault with intent to do great bodily harm should be reversed because there was insufficient evidence to establish that he acted with the specific intent to do great bodily harm. We disagree.

This Court views the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), modified

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

on other grounds 441 Mich 1201 (1992). Intent to do great bodily harm less than murder means an intent to do serious injury of an aggravated nature. *People v Mitchell*, 149 Mich App 36, 39; 384 NW2d 717 (1986). Specific intent may be inferred from circumstantial evidence. *People v Eggleston*, 149 Mich App 665, 668; 386 NW2d 637 (1986).

In this case, the evidence established that the victim, a small, 79-year-old woman, gave defendant a ride, and when she stopped the car to let defendant out, he grabbed her around the neck, punched her, and then shoved her out of the car. She landed underneath the car. Defendant knew she was on the ground because he jumped over her before getting in the driver's seat. Defendant then drove off, without looking to see if she was out of the way, and ran over her arm and leg. Viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could conclude that defendant ran the car over the victim, knowing she was under the car, thus intending serious injury of an aggravated nature.

Moreover, defendant's reliance on *People v Smith*, 217 Mich 669, 674; 187 NW 304 (1922), is misplaced. The *Smith* Court explained that the defendant's act of backing a truck over his foreman was insufficient, *by itself*, to prove specific intent to do great bodily harm. *Smith, supra*, at p 674. The *Smith* Court reasoned that in order to prove the defendant's intent, additional evidence was necessary to show that the defendant could not have reasonably anticipated that his foreman would not move out of the way. *Id.* In this case, on the other hand, defendant knew the victim was lying on the ground, and he knew she was a small, frail woman, unable to move quickly. Nevertheless, rather than looking to verify that she was out of the way, defendant simply jumped into the car and sped away. This evidence was sufficient for a rational trier of fact to conclude that defendant could not have reasonably anticipated that the victim had the time or the ability to get out of harm's way.

Defendant also challenges the sufficiency of the trial court's findings of fact. After reviewing the record and the trial court's findings, we are satisfied that the trial court was aware of the issues involved in this case and correctly applied the law. See *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992).

While we affirm defendant's convictions and sentences, we remand to the trial court for the limited purpose of correcting the Order of Conviction and Sentence and the Judgment of Sentence consistent with the court's sentences pronounced at the sentencing hearing.

Affirmed and remanded. We retain no further jurisdiction.

/s/ Barbara B. MacKenzie

/s/ Marilyn Kelly

/s/ J. Richard Ernst

¹ This reflects the trial court's sentencing as stated at sentencing on the record. However, the Judgment of Sentence indicates that defendant's sentence is nine to fifteen years on the assault conviction (a ten-

year felony), five to ten years on the unarmed robbery conviction (a 15-year felony), one to four years on the UDAA conviction (a 5-year felony), and 30 days on the fleeing and eluding conviction. Because this does not comport with the statutory maximums or the sentences rendered by the trial court, we remand for the purpose of entering a corrected Judgment of Sentence. Furthermore, the Order of Conviction and Sentence and the Judgment of Sentence are inconsistent with the trial court's sentencing on the record because they state that all the sentences were vacated. According to the sentencing transcript, all sentences were retained, with the exception of the unarmed robbery conviction. Because this does not comport with the sentencing record at the sentencing hearing, on remand, the court shall also correct the Order of Conviction and Sentence and Judgment of Sentence to eliminate this error.