

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE SHARP,

Defendant-Appellant.

UNPUBLISHED

December 20, 1996

No. 189601

Detroit Recorder's Court

LC No. 92-012862-FH

Before: Doctoroff, C.J., and Corrigan and R.J. Danhof,* JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of unlawfully driving away an automobile (UDAA), MCL 750.413; MSA 28.645, and fleeing or eluding a police officer, MCL 257.602a; MSA 9.2302(1), for which he was sentenced to two years' probation. We affirm.

The established rule of law at the time of trial was that UDAA is a cognate lesser included offense of armed robbery. *People v Harris*, 82 Mich App 135, 138; 266 NW2d 477 (1978). At trial, defendant requested that the trial court consider lesser included offenses. The trial court then convicted defendant of UDAA, as a lesser included offense of armed robbery. Before defendant was sentenced, however, the Supreme Court issued its decision in *People v Hendricks*, 446 Mich 435, 451; 521 NW2d 546 (1994), holding that UDAA is not a cognate lesser included offense of armed robbery. Defendant now contends that we should apply the *Hendricks* decision retroactively and reverse his conviction. We decline to do so.

As a general rule, decisions of Michigan courts are to be given full retroactivity unless limited retroactivity is preferred where justified by, (1) the purpose of the new rule, (2) the general reliance upon the old rule, and (3) the effect of full retroactive application of the new rule on the administration of justice. *People v West*, 159 Mich App 424, 425-426; 407 NW2d 19 (1987). Retroactive applicability is not favored when a judicial decision overrules prior precedent or settled case law upon

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

which trial judges have relied for many years. *People v Hampton*, 384 Mich 669, 678; 187 NW2d 404 (1971).

Our Supreme Court recently addressed the issue of retroactive applicability in *People v Doyle*, 451 Mich 93; 545 NW2d 627 (1996). In *Doyle*, the Supreme Court held that where a precisely drafted statute, unambiguous on its face, is interpreted by the Supreme Court for the first time, there has not been a change in the law and, accordingly, the decision may be applied retroactively. *Id.* at 112.

The Supreme Court's decision in *Hendricks* did not involve the interpretation of a statute unambiguous on its face. Rather, because the armed robbery statute does not expressly indicate whether UDAA is a cognate lesser included offense, the *Hendricks* Court was required to analyze the legislative purpose for enacting both the armed robbery and UDAA statutes. The *Hendricks* Court concluded that armed robbery is a crime against the person, whereas UDAA is a property offense. *Hendricks, supra* at 451. In holding that UDAA is not a cognate lesser included offense of armed robbery, the *Hendricks* Court effectively overruled the *Harris* decision, which had been precedential since 1978, thereby changing the law. We conclude, therefore, that *Hendricks* should not be applied retroactively because it overruled prior precedent upon which trial courts justifiably relied.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Maura D. Corrigan

/s/ Robert J. Danhof