

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

March 14, 1997

Plaintiff-Appellee,

v

No. 186980

Recorder's Court

LC No. 94-010666

DEQUINCY DEON GLOVER,

a/k/a DEON GLOVER,

Defendant-Appellant.

Before: Hoekstra, P.J., and Marilyn Kelly and J.B. Sullivan,* JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of armed robbery, MCL 750.529; MSA 28.797, assault with intent to murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The judge sentenced him to twenty to sixty years' imprisonment for the armed robbery conviction, twenty to sixty years' imprisonment concurrently for the assault with intent to murder conviction and to the mandatory two-year consecutive prison term for the felony-firearm conviction. We affirm.

First, defendant argues that his convictions of armed robbery and assault with intent to murder violated his protections against double jeopardy. He asserts that the two statutes are aimed at conduct too similar to permit the conclusion that multiple punishments were intended. Both address the same use of force. We disagree. Although defendant did not raise double jeopardy concerns before the trial court, we will review the issue, because it involves a significant constitutional question. *People v Lugo*, 214 Mich App 699, 705; 542 NW2d 921 (1995).

Both the United States and the Michigan Constitutions prohibit placing a defendant twice in jeopardy for a single offense. US Const, Am V; Const 1963, art 1, § 15; *People v Gonzalez*, 197 Mich App 385, 392; 496 NW2d 312 (1992). The federal and the state guarantees protect a defendant

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

from successive prosecutions and from multiple punishments for the same offense. *Id.* The Legislature has the power to define crime and fix punishment, and may specifically authorize penalties for what would otherwise be the “same offense.” *Lugo, supra*, at 706. The Double Jeopardy Clauses are not a limitation of the Legislature. *Id.* Under either the federal or the state system, cumulative punishment does not necessarily violate the prohibition against double jeopardy; the determinative inquiry is whether the Legislature intended to impose cumulative punishment for similar crimes. *Id.*

After a de novo review, we conclude that the Legislature intended to authorize multiple punishments under different statutes for a single criminal transaction. *People v Johnson*, 176 Mich App 312, 313; 439 NW2d 345 (1989). Each statute at issue here prohibits conduct violative of a social norm distinct from the norm protected by the other statute, which indicates a legislative intent to allow multiple punishments. *Id.* at 313-314. The essential elements of the crime of armed robbery are: 1) an assault; 2) a felonious taking of property from the victim’s person or presence; and, 3) a defendant armed with a weapon described in the statute. MCL 750.529; MSA 28.797; *People v Johnson*, 206 Mich App 122, 123; 520 NW2d 672 (1994). The elements of assault with intent to murder include: 1) an assault; 2) with specific intent to commit murder; 3) which, if successful, would make the killing murder. MCL 750.83; MSA 28.278; *People v Rockwell*, 188 Mich App 405, 411; 470 NW2d 673 (1991).

In this case the assault utilized to perpetrate the armed robbery was the same act that constituted the assault element in the assault with intent to murder charge. However, convictions of both offenses do not violate defendant’s double jeopardy protections. *People v Leach*, 114 Mich App 732, 735-736; 319 NW2d 652 (1982). In order to convict defendant on the assault charge, the jury was required to conclude that, at the time of committing the assault, defendant had the specific “intent to murder.” It could be inferred from the act itself, the means employed or the manner employed. *People v Warren (After Remand)*, 200 Mich App 586, 588-589; 504 NW2d 907 (1993). The jury could infer an intent to kill from the fact that defendant shot the victim three times. Yet, the armed robbery conviction required neither the proof nor the finding of a specific intent to murder. *Johnson, supra* at 123. Instead, for the armed robbery conviction, the prosecution had to establish that defendant specifically intended to permanently deprive the owner of his property. *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995).

Defendant has not been subjected to multiple punishment for the same offense. The wrongful intent with which the assault was committed forms the basis for and justifies the separate and additional punishment resulting from the assault with intent to murder conviction. *Leach, supra* at 736. Also, the presence of the different intent elements indicates that the Legislature intended to prevent two distinct types of harm: robbery and corporal harm.

Defendant further contends that the jury instructions failed to adequately apprise the jury that it could not utilize the same force to support both the armed robbery and the assault with intent to murder convictions. He alleges that the instructions omitted to state that defendant could not be convicted of assault with intent to murder if the jury believed that he shot the victim in order to retain property or in

order to effectuate his escape. However, because defendant made no objection to the court's instructions, our review is precluded unless relief is necessary to avoid manifest injustice. *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995). After a thorough review of the record, we find that the trial court properly instructed the jury and that manifest injustice will not result from our refusal to further review the issue. *People v Moldenhauer*, 210 Mich App 158, 159; 533 NW2d 9 (1995).

Affirmed.

/s/ Joel P. Hoekstra

/s/ Marilyn Kelly

/s/ Joseph B. Sullivan