

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN JOHN THOMPSON

Defendant-Appellant.

UNPUBLISHED

November 21, 1997

No. 194881

Monroe Circuit Court

LC Nos. 95-26850 FH

95-26852 FH

95-26854 FH

Before: Saad, P.J., and O'Connell and M. J. Matuzak*, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of assault with a dangerous weapon, MCL 750.82; MSA 28.277, and two counts of carjacking, MCL 750.529a; MSA 28.797(a). Defendant was sentenced to serve concurrent terms of imprisonment of sixty-four to ninety-six months for the assault conviction and thirty to sixty years for each of the carjacking convictions. We affirm.

On January 1, 1995, at approximately 3:00 a.m., defendant met another individual at defendant's house. The two men conversed and smoked crack cocaine for several hours. At some point, defendant became suspicious that the other individual believed defendant to be a police informant. When the other man left, defendant looked out his front window and observed several cars driving up and down his street. He became frantic, believing that people had been sent to do him harm. After a failed attempt to drive to his relatives' house, defendant went to the police station, where he spoke with Officer DelPiombo. Defendant told DelPiombo that people were after him, but did not provide the officer with any names or information. When defendant concluded that Officer DelPiombo would not protect him from harm, he left the station and attempted to hide in a nearby church.

Defendant eventually left the church and ran into a residential neighborhood. He noticed a woman and her daughter entering their vehicle, which was parked in the street. He grabbed the woman by her coat sleeve, pulled her from the car, and threw her to the ground. Defendant got into the car and demanded the keys, stating "Give me the keys, bitch. I'll kill you." The woman gave defendant the keys and he drove away at a high rate of speed. Defendant abandoned the car when he came to the

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

end of a dead-end street, believing that he had put enough distance between himself and his pursuers. He continued to run, jumped a fence, ran through a creek and into an open field. Defendant testified that he saw a white car sitting in the field with its engine running, and that he knew the car was in the field to watch him. He turned around and ran back in the direction from which he had come. He ran through a residential neighborhood and attempted to open the doors of several houses and a garage or shed. Defendant entered one house through an open door and threatened its occupant with a rock and a pair of scissors. Defendant told the man to call the F.B.I., but not to call 911. The individual picked up the telephone and called 911; he handed the telephone to defendant, who dropped it to the floor. Defendant then threatened the man with a pair of steak knives, asking where his children were. Defendant testified that he intended to take the children hostage and use them as a buffer between himself and his perceived pursuers. When the man told defendant that his children were not at home, defendant ran from the house, and the individual again called 911. As he spoke with the dispatcher, the individual observed defendant attempting to enter several other houses on the block. He did not see anybody following defendant.

As defendant proceeded to run down the street, he noticed a man and woman exiting a van. He ran up to the man, placed a steak knife near his stomach, and demanded the keys. The man gave defendant the keys and shouted for his wife, who had gone to the rear of the van, to get away from the vehicle. The individuals then entered their friend's house and dialed 911. Officer Warner, who was already in the area responding to a previous 911 call, pulled his patrol car behind the van to prevent defendant from backing out of the driveway. The officer ordered defendant out of the van and arrested him. Defendant was subsequently convicted of assault with a dangerous weapon and two counts of carjacking. He appeals as of right.

Defendant's first argument on appeal is that the trial court failed to instruct the jury that defendant must have had specific intent to commit the offense of carjacking. Defendant specifically argues that "[c]arjacking must be considered a crime which requires the specific intent to permanently deprive because it is essentially the equivalent of robbery." However, this Court has recently held that the plain language of the statute does not require an intent to permanently deprive. *People v Terry*, ___Mich App ___, ___NW2d___, (Docket No. 194992, issued 7/11/97), slip op p 8. Therefore, defendant's claim is without merit.¹

Defendant also claims that his sentence of thirty to sixty years' imprisonment for the carjacking offense and sixty-four to ninety-six months' imprisonment for the felonious assault offense is disproportionately severe. We disagree. A sentence must be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 651; 461 NW2d 1 (1990). Appellate review of sentencing is limited to determining whether the trial court abused its discretion. *Milbourn*, *supra* at 644. This Court believes that defendant's sentence reflects the nature of the crime and the circumstances surrounding the offender. The legislative history of the carjacking provision suggests that the Michigan Legislature considered carjacking to be a particularly heinous crime and that it determined that a severe punishment is necessary in order to effectively deter the auto theft trend. Senate Fiscal Agency Legislative Analysis, SB 773(S-1), February 17, 1994, at 2. The Legislature thus provided that, upon conviction, a defendant may be sentenced to life imprisonment

or imprisonment for any term of years. MCL 750.529a. Defendant's sentence, while significant, falls within the range of sentences permitted by the statute. Additionally, we note that defendant was sentenced as a habitual offender. He had previously been convicted of larceny, breaking and entering, and felony sexual assault. He was sentenced to ten years in prison for the assault charge and had been released from prison just six months prior to committing the instant offenses. Given defendant's prior criminal record and the nature of the crime in this case, the trial court determined that defendant was a major threat to society and that he would continue to commit assaultive offenses if not incarcerated. We do not believe that the trial court abused its discretion in sentencing defendant to thirty to sixty years' imprisonment for the carjacking offenses.

Affirmed.

/s/ Henry William Saad

/s/ Peter D. O'Connell

/s/ Michael J. Matuzak

¹ While the trial court did erroneously instruct the jury that defendant must have moved the vehicles (as this is not an element of the offense under CJI2d 18.4a), defendant does not assign error to the court's inclusion of this element in the instruction.