

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
October 18, 2012

V

DELBRIDGE LEE ALEXANDER,  
Defendant-Appellant.

No. 304854  
Kent Circuit Court  
LC No. 10-009682-FH

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Before: MARKEY, P.J., and SHAPIRO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for felonious assault, MCL 750.82; larceny of less than \$200, MCL 750.356(5); and unarmed robbery, MCL 750.530. We affirm. Contrary to defendant's claim the jury was presented with sufficient evidence to conclude that he acted with the intent required to convict of felonious assault and armed robbery. We also find that if there was instructional error, it was harmless beyond a reasonable doubt.

Defendant's convictions arise out of an incident in which he attempted to steal scrap aluminum from the fenced back yard of a demolition company. He initiated the theft on a day that the yard was typically closed. However, as he began to take the scrap metal, two employees of the demolition company arrived and discovered him. Defendant then fled the scene in his car and in doing so, nearly ran over a company employee who was on the telephone trying to reach the police. The near striking of this employee as defendant tried to get away from the site of his larceny was the basis for the felonious assault and unarmed robbery charges.

Defendant contends that his conviction for felonious assault was not supported by sufficient evidence. Specifically, he argues that the evidence that he intended to either injure the victim or to place the victim in fear of an immediate battery was lacking. Claims of insufficient evidence are reviewed de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). We review the evidence in the light most favorable to the prosecution to determine whether the evidence was sufficient to allow any rational trier of fact to find guilt beyond a reasonable doubt. *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002).

Contrary to defendant's claim, however, the record reveals that the prosecution did present sufficient evidence of defendant's intent to support a conviction for felonious assault. To convict a defendant of this crime, it must be proven "that the defendant intended either to injure [the victim] or to make [the victim] fear an immediate battery." "An actor's intent may be

inferred from all of the facts and circumstances.” *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998) (citation omitted). “Because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient.” *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999) (citation omitted). Evidence was presented that defendant could have driven straight out of the lot, but that he instead turned his vehicle in the victim’s direction. The victim and his fellow employee testified that defendant appeared to purposefully turn in the victim’s direction, then drove directly at the victim who was attempting to call the police, and that the victim had to jump out of the car’s path to avoid being hit. The victim further testified that defendant was in control of the vehicle, that defendant was looking at the victim, and that defendant looked angry. This was sufficient evidence “that the defendant intended either to injure [the victim] or to make [the victim] fear an immediate battery.”

Defendant also claims that the evidence was not sufficient to show the intent necessary for the crime of unarmed robbery which requires that the defendant “in the course of committing a larceny . . ., uses force or violence against any person who is present, or [] assaults or puts the person in fear.” Having concluded that there was sufficient evidence to convict under the felonious assault statute, we see no basis to rule otherwise on the unarmed robbery charge arising out of the exact same actions as he attempted to flee from the larceny.

Defendant also argues that the standard unarmed robbery instruction was inadequate in this case because it did not clearly specify the level of intent, if any, required for the jury to find guilt of armed robbery on the grounds that the victim was “put in fear.” However, once again, the conviction of felonious assault demonstrates that if there was any error, it was harmless. The sole basis for the felonious assault charge was defendant’s attempt to drive his car at or near the victim, i.e., the same action that was the basis for the unarmed robbery charge. The jury was properly instructed on the elements of felonious assault including that in order to convict, it was necessary to find “that the defendant intended either to injure [the victim] or to make [the victim] fear an immediate battery.” Unless the jury concluded that defendant purposely drove his car toward the victim, it could not have convicted him of felonious assault. This finding would clearly satisfy any intent requirement for unarmed robbery.

Affirmed.

/s/ Jane E. Markey  
/s/ Douglas B. Shapiro  
/s/ Amy Ronayne Krause