

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK HOWARD,

Defendant-Appellant.

UNPUBLISHED

January 31, 1997

No. 188822

Detroit Recorder's Court

LC No. 95-001846

Before: Holbrook, Jr., P.J., and White and S.J. Latreille,* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of assault with intent to rob while armed, MCL 750.89; MSA 28.284. He was sentenced to serve an enhanced prison term of fifteen to twenty-five years in prison as a result of his conviction as an habitual offender, third offense, MCL 769.11; MSA 28.1083. We affirm.

Defendant first argues that there was insufficient evidence presented at trial to support his conviction. We disagree. In determining whether evidence presented at trial was sufficient to sustain a conviction we review the evidence presented in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992); *People v Catanzarite*, 211 Mich App 573, 577; 536 NW2d 570 (1995).

The essential elements of the crime of assault with intent to rob while armed are: (1) an assault committed with force and violence, (2) with the intent to rob or steal, and (3) the defendant's being armed. *People v Cotton*, 191 Mich App 377, 391; 478 NW2d 781 (1991). Because this is a specific intent crime, evidence must be presented showing that the defendant intended to rob or steal. *Id.* Intent may be inferred from the facts in evidence. *People v Harris*, 110 Mich App 636, 641-642; 313 NW2d 354 (1981).

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

Here, evidence was presented that defendant assaulted the complainant by wrapping an electric cord around his neck, and that defendant was armed with a weapon (i.e., an electric cord) at the time he perpetrated the assault. Defendant's intent to commit the robbery and the assault contemporaneously may be inferred from his repeated requests for a loan from the complainant, his knowledge of the general location of the complainant's wallet, the assault, and the ultimate disappearance of the complainant's money. Accordingly, viewing the evidence in a light most favorable to the prosecution, we conclude that sufficient evidence was presented to support defendant's conviction of assault with intent to rob while armed.

Defendant next argues that the trial court abused its discretion in imposing a disproportionate sentence. We disagree. A trial court abuses its discretion in rendering sentence when it violates the principal of proportionality. *People v Odendahl*, 200 Mich App 539, 540-541; 505 NW2d 16 (1993). A sentence must be proportionate to the offense and the offender. *People v Milbourn*, 435 Mich 630 635-636; 461 NW2d 1 (1990). Our review of defendant's habitual offender sentence is limited to consideration of whether the sentence violates the principal of proportionality, without reference to the sentencing guidelines. *People v Gatewood (On Remand)*, 450 Mich 1021 (1996).

Defendant's criminal history comprises two additional felonies since 1992, including assault with intent to do great bodily harm. Defendant has inflicted violence upon his family in an effort to finance his drug usage. Moreover, defendant's presentence investigation report notes that, at the time defendant committed this offense, he was under probation supervision for a previous felony and that his overall readjustment to the community had been poor. Defendant has continued to use crack cocaine and involve himself in criminal activities. Finally, the assault perpetrated by defendant resulted in the complainant's suffering from a sore throat for a period of approximately two weeks. Given these facts, we conclude that the sentence was proportionate to the offender and to the seriousness of this offense. Accordingly, the trial court did not abuse its discretion in rendering sentence.

Finally, defendant argues that the trial court erred in assessing twenty-five points for Offense Variable (OV) Two, of the sentencing guidelines as calculated for robbery, "Physical Attack and/or Injury," because the evidence presented at trial failed show that the complainant suffered bodily injury as a result of the assault perpetrated upon him by defendant. We disagree. A score of twenty-five points for OV 2 is to be assessed by the trial court where the victim of an assault was subjected to bodily injury and/or terrorism. Here, the complainant testified at sentencing and the presentence investigation report notes that the complainant's throat was sore for approximately two weeks following defendant's assault upon him. Therefore, evidence in the record exists to support the trial court's scoring of OV 2. See *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993); *People v Warner*, 190 Mich App 26, 28; 475 NW2d 397 (1991).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Helene N. White
/s/ Stanley J. Latreille

