STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT HARRIS,

Defendant-Appellant.

UNPUBLISHED
February 7, 1997

No. 185898
Recorder's Court
LC No. 94-011902

Before: Bandstra, P.J., and Neff and M.E. Dodge,* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for breaking and entering a motor vehicle with the intent to steal property with a value over five dollars, MCL 750.356a; MSA 28.588(1), and assault with intent to commit great bodily harm less than murder, MCL 750.84; MSA 28.279. Defendant subsequently pleaded guilty to being a third habitual offender, MCL 769.11; MSA 28.1083. Defendant was sentenced to nine to fifteen years' imprisonment as a third habitual offender.[1] We affirm.

Defendant first argues on appeal that the trial court's findings of fact as to the value of the property taken and as to the fact that defendant pried open the vehicle's window were clearly erroneous. We disagree. A trial court's findings of fact will not be reversed unless they are clearly erroneous. *People v McElhaney*, 215 Mich App 269, 273; 545 NW2d 18 (1996); *People v Haywood*, 209 Mich App 217, 226; 530 NW2d 497 (1995). A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that a mistake has been made. *McElhaney, supra.*

The offense of breaking and entering a motor vehicle for the purpose of stealing goods valued at five dollars or more requires proof that (1) the defendant entered or broke into a vehicle; (2) that he either entered or broke into a vehicle with the purpose or intent of stealing or unlawfully removing property; and (3) that the defendant intended to remove property valued at five dollars or more. MCL 750.356a; MSA 28.588(1); *People v Nichols*, 69 Mich App 357, 359; 244 NW2d 335 (1976). A

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

defendant need not obtain possession of any of the goods to be criminally liable under the statute. *Id.* at 360.

As noted in *Nichols*, "the actual value of the goods taken or intended to be taken is not an element" of the stated offense. *Id.* at 359. Rather, the necessary element to be proven for the offense is that the defendant *intended* to take property valued at over five dollars. *Id.* The trial court's finding of fact that the victim's jacket, including its contents, and a briefcase amounted to a value over five dollars was not clearly erroneous. The victim's testimony that the value of the items exceeded five dollars supported the trial court's finding of fact. See *People v Dyer*, 157 Mich App 606, 611; 403 NW2d 84 (1986). Our review of the victim's testimony regarding the value of the items does not lead us to believe that the testimony was based on sentiment or personal value. *Id.* In addition, it was not clearly erroneous for the trier of fact to determine that defendant intended to steal property over five dollars as defendant was still in the victim's van looking for more items to take while the aforementioned items were laying out on the sidewalk.

Also, the trial court did not clearly err in finding that defendant was the person who broke into the victim's vehicle. Defendant was found completely inside the van. Defendant did not have permission to enter the van. The vent window on the passenger side of the van was pried open. This is also the side that defendant was in when the victim first saw him. The combination of all of these factors gives rise to the inference that defendant broke into the victim's vehicle.

Defendant next claims that the prosecution failed to present sufficient evidence of defendant's intent to support his conviction for assault with intent to commit great bodily harm. We disagree. In determining whether sufficient evidence has been presented to sustain a conviction, the Court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Assault with intent to commit great bodily harm requires proof of : (1) an attempt or offer with force or violence to do corporal hurt to another (an assault), (2) coupled with an intent to do great bodily harm less than murder. *People v Harrington*, 194 Mich App 424, 428; 487 NW2d 479 (1992). "Great bodily harm" has been defined as "serious injury, of an aggravated nature," *People v Troy*, 96 Mich 530, 537; 56 NW 102 (1893), and "serious and permanent bodily injury," *People v Miller*, 91 Mich 639, 643; 52 NW 65 (1892). Assault with intent to commit great bodily harm is a specific intent crime. The specific intent necessary to constitute the offense may be found in conduct as well as words. *People v Mack*, 112 Mich App 605, 611; 317 NW2d 190 (1981).

Viewing the evidence in a light most favorable to the prosecution, we conclude that the prosecution presented sufficient evidence of defendant's specific intent to commit an assault with intent to do great bodily harm. The victim ordered defendant out of his vehicle. Defendant complied. Defendant then backed away from the vehicle a little bit. At this point, defendant could have left the scene. The victim then turned his back to defendant to pick up his belongings from the sidewalk. At that point, defendant pulled out a sharp object (possibly a knife) and stabbed the victim three times in

the back, very close to his spine and other vital organs. Had the victim not turned around, defendant would have struck him a fourth time in the back, but instead, struck him in the forehead. A rational trier of fact could find beyond a reasonable doubt, based on these facts, that defendant had the specific intent to assault the victim with the intent to do great bodily harm.

We affirm.

/s/ Richard A. Bandstra
/s/ Janet T. Neff
/s/ Michael E. Dodge

[1] We note that, although the judgment of sentence states that defendant was sentenced to nine to fifteen years' imprisonment, the sentencing transcript indicates that the sentence imposed was nine to thirteen years. We assume that the transcript contains a typographical error and that the judgment of sentence is correct because a sentence of nine to thirteen years would violate *People v Tanner*, 387 Mich 683; 199 NW2d 202 (1972).