STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DUANE E. YOUNG,

Defendant-Appellant.

UNPUBLISHED
February 3, 1998

No. 199231
Recorder's Court
LC No. 96-003980

Before: Kelly, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

Defendant was convicted following a bench trial of carjacking, MCL 750.529a; MSA 28.797(a), kidnapping, MCL 750.349; MSA 28.581, and assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. He was sentenced to twenty to thirty years' imprisonment for the carjacking conviction, twenty to thirty years' imprisonment for the kidnapping conviction, and five to ten years' imprisonment for the assault with intent to do great bodily harm conviction. Defendant appeals as of right, and we affirm.

Defendant first argues that the prosecution failed to present sufficient evidence to support his kidnapping conviction because there was insufficient evidence on the element of asportation. We disagree. Asportation is a judicially required element, which has been read into the kidnapping statute. *People v Jaffray*, 445 Mich 287, 298; 519 NW2d 108 (1994); *People v Wesley*, 421 Mich 375, 384; 365 NW2d 692 (1984). However, it only applies to the three forms of kidnapping that do not require specific intent. *Jaffray, supra*. Here, defendant was charged with forcible confinement with intent to secretly confine the victim. This form of kidnapping requires specific intent and thus, the element of asportation need not be proven to obtain a conviction. *Jaffray, supra* at 299; *Wesley, supra* at 390.

The evidence presented was sufficient to support a finding beyond a reasonable doubt that defendant forcibly seized or confined the victim with the intent to secretly confine her. After defendant jumped into the truck, which the victim was driving, they drove down the street fighting for control of the vehicle and hitting each other. The victim testified that defendant did not let her go free when she asked

him to take the truck and allow her to go free. The victim pleaded with defendant to let her out of the truck. Defendant replied, "fuck you, bitch; I've got plans for you." From this testimony it can be inferred that defendant intended to secretly confine the victim. Moreover, we note that if asportation had been a necessary element, it was proven beyond a reasonable doubt. The evidence demonstrated that the movement of plaintiff was not incidental to the crime of carjacking and the "plans" defendant had for the victim were obviously separate from the crime of carjacking. The evidence as presented was sufficient and we affirm the conviction for kidnapping.

Defendant next argues that the prosecution failed to present sufficient evidence to support his conviction of assault with intent to do great bodily harm. We disagree. The elements of assault with intent to do great bodily harm less than murder are: (1) "an attempt or offer with force and violence to do corporal hurt to another" coupled with (2) an intent to do great bodily harm less than murder. *People v Bailey*, 451 Mich 657, 668-669; 549 NW2d 325 (1996), amended 453 Mich 1204 (1996). The term "intent to do great bodily harm less than murder" has been defined as an intent to cause serious injury of an aggravated nature. *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986). Intent may be inferred from the conduct itself and the surrounding circumstances. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992).

Viewed in a light most favorable to the prosecution, a rational trier of fact could have concluded that defendant committed an assault upon the victim with the intent to cause her serious injury of an aggravated nature. There was evidence that after the victim fell out of the truck and was lying on the ground, defendant leaned out of the truck and looked at her. He was angry and he said, "fuck you, bitch"[1]. Defendant then stepped on the gas, while he was still looking down at the victim who was lying partially under the vehicle. He ran over the right side of the victim's body.

Defendant also argues that the trial court failed to give proper and sufficient weight to his alibi defense in its statement of facts and conclusions of law. Again, we disagree. A thorough review of the record reveals that the trial court was aware of defendant's alibi defense and did not believe it. Rather, the court found the victim and Officer Williams to be more credible and, as the trier of fact, resolved the issues against defendant based on its belief as to their credibility. The trial court was under no obligation to believe defendant's alibi, and a remand for a more explicit finding regarding this issue would serve no useful purpose. See *People v Legg*, 197 Mich App 131, 135; 494 NW2d 797 (1992).

Defendant's next claim on appeal is that he was denied due process because the trial court decided that he was guilty before hearing closing arguments. This claim is not well-grounded. Prior to closing arguments, the trial judge indicated that he only wanted to hear brief arguments. He stated, "Brief statements. I've heard all the--." Defendant argues that this statement really meant "Counsel, please be brief in your closing arguments because I've heard all of the testimony and it is clear in my mind that the defendant is guilty on all counts." Defendant's interpretation of the trial court's brief statement is pure speculation and does not overcome the presumption that the trial court discharged its duties in a constitutional manner. *People v Purcell*, 174 Mich App 126, 129; 435 NW2d 782 (1989). Because defendant has not demonstrated that the proceedings were improper, there was no error which requires reversal.

Lastly, defendant argues that the trial court abused its discretion when it denied defendant's request to reopen the proofs. We disagree. After the defense rested and the prosecution indicated that it was waiving rebuttal, defendant stated "Can I finish telling?" The trial court stated, "No, no, you're done." On appeal, defendant contends that his request to "finish telling" was really a request to reopen the proofs. Defendant fails to inform this Court, as he failed to do below, about what he wanted to "finish telling", how his further testimony would have changed the outcome of the case or how the trial court's refusal to allow him to continue talking, after the defense rested, denied him a fair trial. At trial, the defense focused on attacking the identification testimony and offering an alibi. Defendant was allowed to completely cross exam the witnesses and was allowed to testify and deny any involvement in the incident. He explained his alibi in detail. Based on our review of the record, we do not find that the trial court abused its discretion in continuing with closing arguments and rendering its verdict without allowing defendant to "finish telling". *People v Collier*, 168 Mich App 687, 694; 425 NW2d 118 (1988).

Affirmed.

/s/ Michael J. Kelly
/s/ Harold Hood
/s/ Roman S. Gribbs

[1] In his brief on appeal, defendant claims that it is not clear from the transcript whether the victim testified that defendant actually said "fuck you, bitch" prior to running her over. This claim is unfounded. A review of the transcript reveals that victim clearly testified that defendant made the actual statement while looking at her immediately before running her over (Trial transcript, pages 75 and 85).