STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 21, 2000
v	No. 207789 Genesee Circuit Court
NAPOLEON ODOM, JR., Defendant-Appellant.	LC No. 95-053289-FC

Before: Griffin, P.J., and Holbrook, Jr., and J.B. Sullivan*, JJ.

PER CURIAM.

Defendant was convicted by a jury of carjacking, MCL 750.529a; MSA 28.797(a), assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; MSA 28.424(2), and felon in possession of a firearm, MCL 750.224f; MSA 28.421(6). He was sentenced as a second habitual-offender, MCL 769.10; MSA 27.1082, to seven to fifteen years for carjacking, six to ten years for assault with intent to commit great bodily harm, three to five years for being a felon in possession of a firearm, and a mandatory two-year term for the felony-firearm conviction. The carjacking sentence is to be served consecutive to the sentences for assault and felon in possession of a firearm, and all sentences are to be served consecutive to the felony-firearm sentence. This Court granted defendant's application for a delayed appeal, limited to the issue whether defendant's dual conviction for carjacking and assault with intent to commit great bodily harm violate the constitutional protections against multiple punishment for the same offense. US Const, Am V; Const 1963, art 1, § 15. We affirm.

A double jeopardy issue constitutes a question of law that is reviewed de novo by this Court. *People v Pitts*, 222 Mich App 260, 263; 564 NW2d 93 (1997); *People v Lugo*, 214 Mich App 699, 705; 542 NW2d 921 (1995). "The intent of the Legislature is the determining factor under the Double Jeopardy Clause of the United States and Michigan Constitutions." *People v Denio*, 454 Mich 691, 706; 564 NW2d 13 (1997). We conclude that defendant has not shown that he was subject to multiple punishment, contrary to the intent of the Legislature, and, accordingly, has not established a double jeopardy violation under either the federal or state constitutions.

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

Under the federal test enumerated in *Blockburger v United States*, 284 US 299, 304; 52 S Ct 180; 76 L Ed 306 (1932), legislative intent is determined by analyzing the elements of the two offenses in question and determining whether each offense requires proof of a fact which the other does not. *Denio, supra* at 707. "If the *Blockburger* test is satisfied, it is presumed that the Legislature did not intend to punish the defendant under both statutes. This presumption is rebutted, however, by a clear indication that the Legislature intended punishment under both statutes." *Id*. (citation omitted).

Michigan's carjacking statute provides:

> (1) A person who by force or violence, or by threat of force or violence, or by putting in fear robs, steals, or takes a motor vehicle as defined in section [MCL 750.412; MSA 28.644] from another person, in the presence of that person or the presence of a passenger or in the presence of any other person in lawful possession of the motor vehicle, is guilty of carjacking, a felony punishable by imprisonment for life or for any term of years.
>
> (2) A sentence imposed for a violation of this section may be imposed to run consecutively to any other sentence imposed for a conviction that arises out of the same transaction. [MCL 750.529a; MSA 28.797(a).]

Thus, the prima facie case of carjacking requires proof

> (1) that the defendant took a motor vehicle from another person (2) that the defendant did so in the presence of that person, a passenger, or any other person in lawful possession of the vehicle, and (3) that the defendant did so by force or violence, by threat of force or violence, or by putting the other person in fear. [*People v Davenport*, 230 Mich App 577, 579; 583 NW2d 919 (1998).]

Carjacking is a general intent crime. *Id*. at 580-581.

The statute proscribing assault with intent to commit great bodily harm less than murder provides:

> Any person who shall assault another with intent to do great bodily harm, less than the crime of murder, shall be guilty of a felony punishable by imprisonment in the state prison not more than 10 years, or by fine of not more than 5,000 dollars. [MCL 750.84; MSA 28.279.]

Thus, the prima facie case of assault with intent to do great bodily harm less than murder requires proof of "(1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) [a specific] intent to do great bodily harm less than murder." *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997).

An analysis of the above statutes reveals that carjacking requires proof of an element—the taking of a vehicle—that is not required for conviction of assault with intent to commit great bodily harm.

Similarly, the assault statute requires proof of an element—the specific intent to cause great bodily harm—that is not required for conviction of carjacking. *Denio, supra*. Therefore, because carjacking and assault with intent to commit great bodily harm do not constitute the same offense under the *Blockburger* test, we conclude that defendant's convictions and consecutive sentences for these two crimes do not violate the Due Process Clause of the United States Constitution.

"With regard to Double Jeopardy Clause of the state constitution, this Court uses traditional means to determine legislative intent, such as the subject, language, and history of the statutes." *People v Parker*, 230 Mich App 337, 347; 584 NW2d 336 (1998). "The court should consider whether each statute prohibits conduct violative of a social norm distinct from the norm protected by the other statute, the amount of punishment authorized under each statute, whether the statutes are hierarchical or cumulative, and any other factors indicative of legislative intent." *Lugo, supra* at 706.

In *Parker*, this Court held that dual convictions for carjacking and armed robbery do not violate the double jeopardy protection against multiple punishments for the same offense, observing that the two statutes are addressed at prohibiting conduct violative of distinct social norms. *Parker, supra* at 344. The Court observed that the carjacking statute is "intended to prohibit takings accomplished with force or the mere threat of force," whereas the armed robbery statute is "intended to prohibit takings accomplished by an assault and the use of a dangerous weapon." *Id*. at 343. The Court in *Parker* further noted that "[i]n the carjacking statute, the Legislature specifically authorized two separate convictions arising out of the same transaction." *Id*. at 344.

While the case at bar involves the offense of assault with intent to do great bodily harm, not armed robbery, we nonetheless believe that the rationale in *Parker* applies. Assault with intent to do great bodily harm is aimed at prohibiting assaultive conduct that is specifically intended to cause great bodily harm. See *People v Harrington*, 194 Mich App 424, 429; 487 NW2d 479 (1992). In contrast, as this Court observed in *Parker*, the carjacking statute is intended to prohibit takings accomplished with force or even the threat of force. *Parker, supra* at 343. Because the two offenses address distinct social norms and because the Legislature has clearly authorized multiple punishments for other crimes arising out of the same transaction as a carjacking, we conclude that defendant's dual convictions and consecutive sentences for carjacking and assault with intent to commit great bodily harm less than murder do not violate the double jeopardy protections under the Michigan constitution.

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ Joseph B. Sullivan