

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FREDERICK LEE EVANS,

Defendant-Appellant.

UNPUBLISHED

January 7, 1997

No. 186493

Detroit Recorder's Court

LC No. 94-002792

Before: Doctoroff, C.J., and Corrigan and R.J. Danhof,* JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of armed robbery, MCL 750.529; MSA 28.797, assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to concurrent prison terms of fifteen to thirty years for the armed robbery conviction, six to ten years for the assault with intent to do great bodily harm conviction, two to four years for the felonious assault conviction, and a consecutive two-year term for the felony-firearm conviction. We affirm.

Defendant's first issue on appeal is that the prosecution failed to present sufficient evidence to prove that he possessed the requisite specific intent to convict him of both armed robbery and assault with intent to do great bodily harm. We disagree.

The elements of an armed robbery are (1) an assault, and (2) a felonious taking of property from the victim's person or presence while (3) the defendant is armed with a weapon. *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995). The prosecutor must establish that the defendant intended to permanently deprive the owner of property. *Id.*

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

The prosecution presented sufficient evidence to prove defendant's larcenous intent. The evidence showed that defendant grabbed the complainant and put a gun to the complainant's head while the complainant worked the store's one open cash register. Defendant told the complainant to "[g]ive me the fucking money, bitch." Defendant reached into the open cash register and money fell from defendant's hand as he ran away from the store. The investigating officer found several five-dollar bills lying outside the store. Viewed in a light most favorable to the prosecution, *People v Head*, 211 Mich App 205, 210; 535 NW2d 563 (1995), the evidence was sufficient to support defendant's armed robbery conviction.

The elements of assault with intent to do great bodily harm are (1) an attempt or offer with force or violence to do corporeal hurt to another (an assault), (2) coupled with an intent to do great bodily harm less than murder. *People v Lugo*, 214 Mich App 699, 710; 542 NW2d 921 (1995). The requisite intent may be inferred from the act itself, the means employed, or the manner employed. *People v Leach*, 114 Mich App 732, 735; 319 NW2d 652 (1982).

Here, the evidence showed that defendant shot the complainant with a nine-millimeter handgun in the back of the neck near the fifth cerebral vertebra, and in the right thigh. Viewed in a light most favorable to the prosecution, *Head, supra* at 210, the evidence was sufficient to support defendant's conviction of assault with intent to do great bodily harm.

Defendant's second issue on appeal is that the trial court incorrectly scored Offense Variable (OV) 2 at fifty points for excessive brutality. We disagree.

According to the Michigan Sentencing Guidelines, Second Edition (1988), OV 2, Physical Attack and/or Injury, is to be scored fifty points in an armed robbery where the victim is treated with "excessive brutality." Here, the evidence showed that defendant placed his handgun first against the complainant's temple, then directly against the skin of the complainant's neck, firing a bullet into the complainant's neck close to the fifth cerebral vertebra. When the complainant attempted to push defendant's gun away from his face, defendant shot the complainant a second time in the thigh. Defendant then shot at the complainant a third time, missing complainant but hitting a wine bottle. This evidence supports the trial court's discretionary scoring of OV 2 at fifty points. *People v Ayers*, 213 Mich App 708, 723; 540 NW2d 791 (1995).

Defendant's third issue on appeal is that the trial court committed reversible error in failing to explicitly articulate its reasons for sentencing defendant. Again, we disagree.

At sentencing, defense counsel received requested reductions in the trial court's scoring of OV 13 and OV 17. The prosecution received requested increases in the trial court's scoring of Prior Record Variable (PRV) 5 and PRV 7. The trial court then stated that these changes would result in a guidelines range of 96 to 240 months. Defendant's fifteen year minimum sentence for the armed robbery conviction is well within this range. The context of the remarks made at sentencing by the prosecution, defense counsel and the trial court clearly show that all parties unambiguously understood

that the sentencing guidelines would be the basis for defendant's sentences. *People v Lawson*, 195 Mich App 76, 78; 489 NW2d 147 (1992). Accordingly, the

articulation requirement was satisfied. *Id.*; *People v Broden*, 428 Mich 343, 354; 408 NW2d 789 (1987).

Affirmed.

/s/ Martin M. Doctoroff

/s/ Maura D. Corrigan

/s/ Robert J. Danhof