STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REGINALD WADE MYRICK,

Defendant-Appellant.

UNPUBLISHED
January 31, 1997

No. 186292
Recorder's Court
LC No. 94-010139

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACQUELINE MYRICK,

Defendant-Appellant.

UNPUBLISHED

No. 186293
Recorder's Court
LC No. 94-010139

Before: Hoekstra, P.J., and Marilyn Kelly and Joseph B. Sullivan,* JJ.

PER CURIAM.

Defendant Reginald Wade Myrick (Docket No. 186292) appeals as of right his convictions of two counts of unarmed robbery, MCL 750.530; MSA 28.798, and one count of unlawfully driving away an automobile (UDAA), MCL 750.413; MSA 28.645. Defendant was sentenced to concurrent terms of eight to fifteen years' imprisonment on each unarmed robbery conviction and three to five years' imprisonment on the UDAA conviction. We affirm in part, reverse in part, and remand for further proceedings in the trial court.

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

Defendant Jacqueline Myrick (Docket No. 186293), the wife of defendant Reginald Myrick, appeals as of right her conviction following a jury trial of one count of unarmed robbery, MCL 750.530; MSA 28.798. Defendant was sentenced to 5 ½ to 15 years' imprisonment. We affirm. Defendants' cases were consolidated on appeal.

I

Docket No. 186292

Defendant first argues that his two convictions for unarmed robbery for the taking of car keys and a car violated his right to be free from double jeopardy. We agree. The proper unit of prosecution in a robbery charge is the number of people assaulted, not the number of items taken. *People v Wakeford*, 418 Mich 95, 111-112; 341 NW2d 68 (1983). Because both of these items were taken from a single victim, defendant should only have been charged and convicted of one count of unarmed robbery. *Id*. By so finding, we necessarily reject the argument made by the prosecution that the taking of these two items were separate transactions and, therefore, constituted separate offenses. See *People v Sturgis*, 427 Mich 392, 401; 397 NW2d 783 (1986). From the facts of this case and despite the lapse of time between the taking of the two items, we conclude that the ultimate focus of defendant's robbery intent was the car, not the car keys. The crime was not complete until the vehicle was controlled by defendant. Consequently, we conclude that the taking of car keys and a car constituted one offense. Accordingly, this Court vacates defendant's conviction and sentence for the unarmed robbery relating to the taking of the keys.

Because it appears that the trial court considered all three of defendant's instant convictions in scoring prior record variable (PRV) 7 at twenty points, our vacating one of defendant's unarmed robbery convictions may change the scoring of PRV 7. Accordingly, we remand the case to the trial court to determine if PRV 7 should be lowered and, if so, whether the trial court would impose different sentences given the reduced scoring.[1] We find nothing in the record which indicates that resentencing before a different judge is required. *People v Hughes*, 165 Mich App 548, 549-550; 418 NW2d 913 (1987).

Defendant next argues that the trial court committed error warranting reversal when it used an example involving an armed robbery while instructing the jury on the elements of an unarmed robbery, and effectively coerced a verdict from the jury when it told the jurors that they would be going home by 2:00 p.m. We disagree. When it distinguished armed robbery from unarmed robbery, the trial court specifically told the jurors that it was giving them an example and also told them to follow the law as it was given to them and consider all of the instructions as "a connected series." See *People v Shepherd*, 63 Mich App 316, 321-322; 234 NW2d 502 (1975). The instructions, although somewhat confusing, fairly presented the issues to be tried and sufficiently protected defendant's rights. *People v Ullah*, 216 Mich App 669, 677; 550 NW2d 568 (1996).

Furthermore, we conclude that the trial court's comment that "we're going to finish these instructions and you're going to be home by about 1:30 or 2:00 in the afternoon, maybe" did not create

an atmosphere which seemingly required a hasty verdict. It was an isolated comment made in the middle of an example the judge was giving on the elements of UDAA and was an obvious attempt at humor. The comment was not so egregious as to result in a coerced verdict and thus defendant was not denied his right to a fair trial. *People v Turner*, 213 Mich App 558, 583; 540 NW2d 728 (1995).

Finally, defendant contends that the prosecutor's characterization of the incident as a "Murphy Game" was improper and denied him his right to a fair trial. We disagree. The prosecutor's use of the term "Murphy Game" was an appropriate comment on the evidence presented. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). Codefendant Jacqueline Myrick enticed the victim back to her apartment where defendant robbed him. This conduct fits squarely within the definition of "Murphy Game" outlined in *People v Thomas*, 55 Mich App 368, 370 n 1; 222 NW2d 320 (1974). Furthermore, the prosecutor need not state any inferences which arise from the evidence in the blandest possible terms and, thus, using the descriptive term "Murphy Game" was not improper. *People v Marji*, 180 Mich App 525, 538; 447 NW2d 835 (1989).

II

Docket No. 186293

Defendant first argues that her conviction for unarmed robbery was not supported by sufficient evidence. We disagree. There was sufficient evidence to support defendant's conviction of unarmed robbery where she enticed the victim to her apartment building, jiggled the keys as she attempted to open the apartment door and stood by while codefendant Reginald Myrick attacked the victim. When looking at this evidence in a light most favorable to the prosecution, *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985), there was sufficient evidence to show that defendant aided and abetted in the unarmed robbery of the victim. As such, there was sufficient evidence to support her conviction of unarmed robbery.

Next, defendant contends that the trial court erred in scoring twenty-five points for offense variable 2 (OV 2), bodily injury, where there was no evidence that defendant ever touched the victim. We disagree. Instruction A accompanying OV 2 states: "In multiple offender cases when one offender is assessed points for physical attack and/or injury, all offenders shall be assessed the same number of points." Michigan Sentencing Guidelines (2d ed, 1988), p 99. Because there is no question that the victim suffered bodily injury at the hands of defendant's husband and defendant's husband was properly assessed twenty-five points for OV 2, defendant was also properly scored twenty-five points for OV 2.

Finally, defendant argues that the lower court improperly scored ten points for OV 17 because she was not convicted of robbing the victim of the car, she was only convicted of robbing him of the keys. We disagree. Although OV 17, "Aggregate Value of Property Obtained, Damaged or Destroyed," applies only to the actual offense the defendant was convicted of, and other uncharged offenses or offenses charged but not resulting in conviction cannot be used in calculating the points a defendant might receive under OV 17, *People v Johnson*, 144 Mich App 497, 499-500; 376 NW2d 122 (1985), the instructions which accompany OV 17 state: "In multiple offender cases, the aggregate

value of property obtained, damaged or destroyed is determined *by adding together the aggregate value of property obtained, damaged or destroyed by each offender*. Michigan Sentencing Guidelines (2d ed, 1988), p 100 (emphasis added). Thus, according to the guidelines themselves, scoring defendant ten points because the value of the car was over $5000 was appropriate, even though defendant was only convicted of robbing the victim of his keys.

III

In Docket No. 186292, we affirm in part, vacate in part, and remand for further proceedings in the trial court. We do not retain jurisdiction.

In Docket No. 186293, we affirm.

/s/ Joel P. Hoekstra
/s/ Marilyn Kelly
/s/ Joseph B. Sullivan

[1] We make no comment at this time on the proportionality of the sentences imposed.