

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES S. HOLLOWAY, a/k/a
STEVEN HOLLOWAY,

Defendant-Appellant.

UNPUBLISHED

December 15, 1998

No. 203806

Recorder's Court

LC No. 96-008373

Before: Griffin, P.J., and Neff and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for unlawfully driving away an automobile, MCL 750.413; MSA 28.645, and aggravated assault, MCL 750.81a; MSA 28.276(1). Defendant was sentenced to six months to one year for unlawfully driving away an automobile, and two to five years for aggravated assault. Defendant's sentences were vacated, and he was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to two to fifteen years in prison. We affirm.

Defendant was staying at the victim's home after his release from an alcohol and drug treatment center. The victim was defendant's former girlfriend, who remained his friend and payee for his Social Security benefits. On the night of the assault, defendant made an attempt to resume an intimate relationship with the victim. She declined. Defendant became hostile and demanded that the victim give him all of his money that she had been saving for him. The victim declined, unless defendant's mother was involved, because she was afraid that he would have a relapse and become violent. Defendant became physically abusive and threatened her life. Defendant told the victim to drive him to his mother's house. While the victim was driving on the expressway, defendant punched the victim in the face three times. After the victim was able to pull to the shoulder of the road, defendant punched her in the face several more times. Defendant forced the victim to resume driving and continued to threaten her life.

After stopping the car near defendant's mother's house, the victim tried to get out and run but defendant tackled her from behind, grabbed her car keys, and pushed her across the street to his mother's house. As the victim entered the house, she heard defendant drive off with her car. The victim

telephoned the police and was subsequently transported by ambulance to the hospital where she remained overnight. The victim did not regain possession of her car for three to four weeks.

Defendant's sole issue on appeal is that there was insufficient evidence to convict him of aggravated assault and unlawfully driving away an automobile. We find defendant's argument to be without merit.

The offense of aggravated assault requires a prosecutor to prove that (1) defendant tried to physically injure the victim, (2) defendant intended to injure the victim, and, (3) the assault caused a serious physical injury to the victim requiring immediate medical treatment or caused disfigurement, impairment of health, or impairment of a part of the victim's body. MCL 750.81a; MSA 28.276(1). See CJI2d 17.6. An element is satisfied if the evidence would justify a reasonable person in concluding that it was established beyond a reasonable doubt. *People v Brown*, 97 Mich App 606, 611; 296 NW2d 121 (1980). Defendant challenges the sufficiency of the evidence with respect to whether the prosecution established the physical injury element beyond a reasonable doubt.

Defendant admitted to punching the victim in the eye one time but denied threatening, manhandling, or further striking the victim. Defendant is six feet tall and weighs 160 pounds. The victim is five feet and six or seven inches tall and weighs about 120 pounds. The victim testified that she sustained a blackened and swollen eye, suffered several blows to the face causing her to bleed, and was physically assaulted over an extended period of time and in various locations. She was hospitalized overnight and at the time of trial, she continued to suffer from blurred vision. The testimony of the investigating police officer confirmed that the victim had a swollen, blackened eye and scrapes and scratches on her body, including her knee and arm.

This issue was justifiably submitted to the jury for determination. *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991). The evidence presented at trial, when viewed in a light most favorable to the prosecution, was sufficient to permit a rational jury to conclude that the victim suffered the type of serious injury contemplated by the aggravated assault statute. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995); *Brown, supra* at 611.

Defendant further argues that there was insufficient evidence to convict him of unlawfully driving away an automobile. Such a conviction required the prosecutor to prove that (1) defendant took possession of the victim's car, (2) drove away in the car, (3) wilfully and, (4) without authority or the victim's permission. *People v Hendricks*, 200 Mich App 68, 71; 503 NW2d 689 (1993), *aff'd* 446 Mich 435; 521 NW2d 546 (1994). Defendant claims he had equal or superior rights to the victim's car because he had helped her recover it from repossession authorities. In support of his allegation, defendant asserts that he had a key to the car and that he had used the car on a prior occasion.

Defendant's assertion of his alleged right to possess and drive the vehicle was an issue of fact before the jury. The jury heard both defendant's and the victim's testimony and concluded that defendant interfered with the victim's ownership and possessory rights in her car. Judgments relating to witness credibility are the function of the jury and not the reviewing court. *People v Givans*, 227 Mich App 113, 124; 575 NW2d 84 (1997); *People v McFall*, 224 Mich App 403, 412; 569 NW2d 828

(1997). The words that a witness speaks, as well as his tone and volume, facial expressions, and demeanor are all factors that are considered by the factfinder when he determines whether the truth is being told. *People v Lemmon*, 456 Mich 625, 646; 576 NW2d 129 (1998).

We hold that there was sufficient evidence presented at trial to permit a rational jury to conclude that defendant unlawfully drove away the victim's car. Defendant, admittedly, took possession of the victim's car and wilfully drove away. Defendant knew that the title of the vehicle was in the victim's name, even if he did provide financial assistance in regard to the recovery of the vehicle from repossession authorities. Defendant may have had a key to the car at some prior time, but he did not have the alleged key when, in the process of assaulting the victim, he grabbed her car keys and used them to start and drive away her car. The victim did not give defendant permission to take her car. Although defendant testified that he attempted to return the car by leaving a message on the victim's answering machine as to its location and left her keys in the car, it is doubtful that he would have gone to such lengths if he believed that he had rightful possession of the vehicle.

In sum, viewing the evidence in the light most favorable to the prosecution, a rational jury could have found that the essential elements of the crimes of aggravated assault and unlawfully driving away an automobile were proven beyond a reasonable doubt.

Affirmed.

/s/ Richard Allen Griffin

/s/ Janet T. Neff

/s/ Richard A. Bandstra