

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIMMIE DUWAYNE BEAVERS,

Defendant-Appellant.

UNPUBLISHED

November 22, 2002

No. 235773

Saginaw Circuit Court

LC No. 01-019558-FH

Before: Markey, P.J., and Saad and Smolenski, JJ.

MEMORANDUM.

Defendant appeals as of right his jury convictions for assault with intent to commit great bodily harm less than murder, MCL 750.84, and second-degree retail fraud, MCL 750.356d. We affirm.

Defendant's convictions arise out of a shoplifting incident at a Rite Aid store. The assistant manager testified that he approached defendant after he observed defendant concealing two bottles of beer in his pants. Defendant pulled the bottles out, and began striking the manager in the head with the bottles, aiming at his eyes. Defendant told the manager he was going to "f _ _ _ him up". After defendant dropped the bottles, he attempted to gouge the manager's eyes with his fingers.

On appeal, defendant argues unpersuasively that there was insufficient evidence to support the assault conviction where there was no showing that he inflicted or intended to inflict a serious injury. Defendant's argument is frivolous.

In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution, and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

The elements of assault with intent to do great bodily harm less than murder are: (1) an attempt or offer with force or violence to do corporal hurt to another, (2) coupled with an intent to do great bodily harm less than murder. *People v Pena*, 224 Mich App 650, 659; 569 NW 871 (1997), modified, 457 Mich 883 (1998). No actual physical injury is required for the elements of the crime to be established. *People v Harrington*, 194 Mich App 424, 430; 487 NW2d 479

(1992). Intent to do great bodily harm less than murder has been defined as an intent to do serious injury of an aggravated nature. *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986).

The jury could reasonably find that defendant intended to inflict a serious injury of an aggravated nature. The victim's testimony established that defendant attacked the victim with beer bottles and tried to gouge the victim's eyes with the intent to inflict serious harm. The trial court properly denied defendant's motion for directed verdict.

Affirmed.

/s/ Jane E. Markey

/s/ Henry William Saad

/s/ Michael R. Smolenski