

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTIE HARRIS,

Defendant-Appellant.

UNPUBLISHED

November 30, 2010

No. 294145

Wayne Circuit Court

LC No. 09-014054-FH

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Defendant Mattie Harris appeals as of right from her bench trial convictions for assault with intent to do great bodily harm less than murder,¹ and felonious assault.² The trial court sentenced Harris to concurrent terms of two to ten years' imprisonment for the assault with intent to do great bodily harm less than murder conviction and one to four years' imprisonment for the felonious assault conviction. We affirm.

I. BASIC FACTS

Nina Pettis testified that on the afternoon of April 21, 2009, she was living in the City of Detroit. Her boyfriend, Sean Stevens, was over at her house that day. Harris was a neighbor who lived across the street from Pettis. Pettis and Harris previously had an amicable relationship, but they were never close friends. Pettis had stopped speaking with Harris about a year before. Apparently, Harris became angry after Pettis could not provide her with transportation from an auto repair shop. Since that day, the two of them called each other names from a distance, but these interactions were never face-to-face and never became violent.

On the day of the incident, Pettis returned home from grocery shopping. When she opened the car door, Harris was there. Harris demanded to know why Pettis had blown her car horn at her. Pettis denied doing so. Harris wrote down Pettis's license plate number. Pettis told Stevens that Harris had confronted her and that she was scared Harris was going to make trouble

¹ MCL 750.84.

² MCL 750.82.

with the police. Pettis decided to go out and write down Harris's license plate number and also call the police to report the confrontation.

Pettis walked back outside with her cell phone to report Harris's license plate number. Harris was walking back across the street as well. Pettis noticed Harris reach under her shirt. Pettis immediately ran back into her building because she knew Harris had something, but was not sure what it was. Pettis went through the building's main entrance that was always unlocked and then went through a second, self-locking door that led to the common area of the complex. Harris broke the window of the locked door with a hammer, reached inside, turned the knob, and opened the door. Harris attacked Pettis, grabbing her by the hair and pulling her back outside. Pettis had dropped her cellular phone when she ran into the building. She had nothing in her hands. Harris no longer had the hammer, which was lying on the ground. Pettis could not see anything else in Harris's hands, although she felt the sensation of being "scratched up." Stevens eventually came out and broke up the fight. Both Pettis and Stevens called 9-1-1. Pettis noticed that Harris had cut Pettis's face, chest, and stomach. Stevens took Pettis to the hospital where she received approximately 100 stitches and a tetanus shot.

Stevens testified that he was lying down in bed when Pettis returned from grocery shopping that day. Based on statements that Pettis made, Stevens believed that there was trouble outside, but he did not feel the need to go back outside with Pettis. However, Stevens got up and looked out the window after he heard an irate voice. Harris was crossing the street and looked upset. Stevens saw Harris reach up her shirt. He was afraid she might have a weapon and warned her, "don't do that." Stevens hurried up and put his clothes on to go outside. By the time Stevens got outside, he saw Harris and Pettis locked up in a tussle. He got them apart and noticed that Pettis was bloodied. Harris's right hand looked like the fingers were pinched together, holding what looked to be a razor blade.

Harris testified that she previously had a friendly relationship with Pettis. At some point, the relationship soured, and Pettis became threatening. According to Harris, Pettis's harassment became so bad that Harris had to use the back door. Harris had seen Pettis in other altercations with neighbors. On the day of the incident, Harris was walking home from the store when Pettis drove up and started calling her names. Harris was angry because she was already in pain from a back injury. The two of them argued back and forth in a heated altercation. Harris went into her townhouse and called the housing office, but she was told that security did not arrive until later that afternoon. Harris then decided "I just felt like I got to stand up, I gotta face her; she's not gonna leave me alone." Pettis came back across the street, and Harris believed that there would be a fight. She grabbed a hammer to defend herself. She did not intend to use the hammer—she only wanted to scare Pettis. Harris felt something cut her wrist, though she never saw Pettis with anything. Harris dropped the hammer and grabbed Pettis. They struggled and pulled each other's hair. According to Harris, Pettis had something in her hand. Harris claimed that Stevens then came out, put a gun to her head, and ordered the women to stop fighting. Harris denied breaking the window to the door of the apartment.

The trial court listened to the various 9-1-1 calls that were made that day. The trial court found that Harris was the aggressor, pursued the victim, and subsequently cut the victim numerous times, presumably with a razor. Accordingly, the trial court found Harris guilty of both assault with intent to do great bodily harm less than murder and felonious assault. Harris now appeals as of right.

II. DOUBLE JEOPARDY

A. STANDARD OF REVIEW

Harris argues that her convictions for both assault with intent to do great bodily harm less than murder and felonious assault violated her right to be free from double jeopardy and that the convictions were inconsistent. Harris failed to preserve this issue in the lower court proceedings. However, despite such failure, a double jeopardy issue presents a significant constitutional question that we will nevertheless consider on appeal under the plain error standard.³

B. ANALYSIS

The United States and Michigan Constitutions protect a defendant from being twice placed in jeopardy for the same offense.⁴ This protection extends to both multiple prosecutions and multiple punishments.⁵ The purpose of this prohibition, in a multiple-punishment context, is to prevent a court from imposing a greater sentence than that intended by the Legislature.⁶ In *People v Smith*,⁷ the Michigan Supreme Court explained that, even if the Legislature has not clearly expressed its intent, multiple offenses may be punished if each offense has an element that the other does not. And, following *Smith*, in *People v Strawther*⁸ the Michigan Supreme Court entered an order, holding that because the crimes of assault with intent to commit great bodily harm and felonious assault have different elements, the defendant's convictions for both crimes did not violate his double jeopardy protections. *Strawther*, therefore, compels a holding here that Harris's dual convictions for both assault with intent to do great bodily harm less than murder and felonious assault did not violate her double jeopardy protections.

Moreover, verdicts are inconsistent only if they cannot be rationally reconciled with the trial court's underlying factual findings.⁹ Assault with intent to do great bodily harm less than murder and felonious assault are two separate crimes containing separate elements. Therefore, we conclude that the trial court's finding that Harris was guilty of both offenses was not inconsistent.

³ *People v McGee*, 280 Mich App 680, 682; 761 NW2d 743 (2008); *People v Meshell*, 265 Mich App 616, 628; 696 NW2d 754 (2005).

⁴ US Const, Am V; Const 1963, art I, § 15; *People v Herron*, 464 Mich 593, 599; 628 NW2d 528 (2001).

⁵ *Herron*, 464 Mich at 599.

⁶ *People v Grazhidani*, 277 Mich App 592, 598; 746 NW2d 622 (2008).

⁷ *People v Smith*, 478 Mich 292, 316; 733 NW2d 351 (2007).

⁸ *People v Strawther*, 480 Mich 900; 739 NW2d 82 (2007).

⁹ *People v Ellis*, 468 Mich 25, 27; 658 NW2d 142 (2003).

III. SENTENCING

A. STANDARD OF REVIEW

Harris argues that she is entitled to resentencing where the trial court erroneously assessed her prior misdemeanor conviction for operating without a license as two points under Prior Record Variable 5 (PRV-5). She argues that the trial court should have scored zero points for PRV-5 because the misdemeanor was not a crime against a person or property and because it was not an alcohol-related driving offense. We review a trial court's decision in scoring under the sentencing guidelines to determine whether the trial court properly exercised its discretion and whether the record adequately supported a particular score.¹⁰

B. ANALYSIS

We agree with Harris that a two-point assessment under PRV-5 was improper because the misdemeanor was not a crime against a person or property and because it was not an alcohol-related driving offense.¹¹ However, Harris readily admits that, even if the error in scoring is changed, it will not affect the guidelines unless this Court also concludes that Harris's conviction for felonious assault requires reversal and changes the point assessment for concurrent felonies under PRV-7. We have not reached such a conclusion. Therefore, any error in scoring PRV-5 was harmless.

We affirm.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood

¹⁰ *People v Steele*, 283 Mich App 472, 490; 769 NW2d 256 (2009).

¹¹ MCL 777.55.