

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID LASTON,

Defendant-Appellant.

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UNPUBLISHED

June 7, 2011

No. 296566

Wayne Circuit Court

LC No. 09-018998-FC

Before: SAAD, P.J., and JANSEN and K. F. KELLY, JJ.

JANSEN, J. (*concurring in part and dissenting in part*).

I fully concur with the majority's conclusion that the introduction of evidence concerning defendant's prior crimes did not deny him a fair trial. I also concur with the majority's conclusion that defendant's felon-in-possession conviction must be reversed. However, I respectfully dissent from the majority's determination that there was sufficient evidence to support defendant's convictions of carjacking and assault with intent to rob while armed.

The essential elements of carjacking, MCL 750.529a, are "(1) that the defendant took a motor vehicle from another person, (2) that the defendant did so in the presence of that person, a passenger, or any other person in lawful possession of the motor vehicle, and (3) that the defendant did so either by force or violence, by threat of force or violence, or by putting another in fear." *People v Green*, 228 Mich App 684, 694; 580 NW2d 444 (1998). The essential elements of assault with intent to rob while armed, MCL 750.89, are "'(1) an assault with force and violence; (2) an intent to rob or steal; and (3) the defendant's being armed.'" *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003), quoting *People v Cotton*, 191 Mich App 377, 391; 478 NW2d 681 (1991). A carjacking conviction requires proof that the defendant actually took a motor vehicle from another person. *People v Davenport*, 230 Mich App 577, 579; 583 NW2d 919 (1998). Similarly, "[b]ecause [assault with intent to rob while armed] is a specific-intent crime, there must be evidence that the defendant intended to rob or steal." *Cotton*, 191 Mich App at 391.

In the present case, I perceive absolutely no evidence that defendant actually took the victim's motor vehicle, *Davenport*, 230 Mich App at 579, or that defendant acted with the intent to rob the victim or steal his motor vehicle, *Cotton*, 191 Mich App at 391. I fully acknowledge that defendant shot the victim as he was sitting in his car. But there was no evidence to suggest that defendant ever asked the victim to give him the car. Nor did defendant take the car after he

had shot the victim. The prosecution points to evidence that defendant reached for the handle on the car door. But this evidence, even when viewed in a light most favorable to the prosecution, *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992), is quite simply insufficient to establish any sort of larcenous intent on the part of defendant. I conclude that the prosecution failed to present sufficient evidence from which a rational trier of fact could have concluded beyond a reasonable doubt that defendant took the victim's car or acted with the intent to rob or steal. See *id.* at 513-514.

/s/ Kathleen Jansen