

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MONICA MARTIN,

Defendant-Appellant.

UNPUBLISHED

October 21, 2021

No. 353691

Wayne Circuit Court

LC No. 19-004669-01-FH

Before: SHAPIRO, P.J., and BORRELLO and O’BRIEN, JJ.

SHAPIRO, P.J. (*concurring*).

I concur fully in the majority opinion. I write to note that the judgment in this case reflects that defendant has been convicted of both felonious assault and assault with intent to commit great bodily harm for a single assault against a single person. In my view, this is improper as I explained in my dissent in *People v Davis*, unpublished per curiam opinion of the Court of Appeals, issued November 12, 2019 (Docket No. 332081), a case now scheduled for oral argument on the application before the Supreme Court. The effect of the double felony convictions is significant regardless of the fact that concurrent sentences were imposed. As a result of being convicted of two crimes which by statute cannot exist simultaneously, should defendant ever be charged with a felony in the future she will be a third-felony offender and subject to substantially increased punishment pursuant to the decision in *People v Gardner*, 482 Mich 41; 753 NW2d 41 (2008).¹ I would urge the Supreme Court to reconsider its jurisprudence in both these areas in order to avoid such an injustice and others like it from coming to pass.

/s/ Douglas B. Shapiro

¹ *Gardner* overturned 30 years of settled precedent, see e.g., *People v Stoudemire*, 429 Mich 262; 414 NW2d 693 (1987), and serves as an example of how a strict literalist view of statutory interpretation can yield absurd results.