NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 KA 0228

STATE OF LOUISIANA

VERSUS

DANNIE RAY HAYWARD

Judgment Rendered: June 8, 2007

Appealed from the
Nineteenth Judicial District Court
in and for the Parish of East Baton Rouge, State of Louisiana
Trial Court Number 10-05-0487

Honorable Wilson Fields, Judge Presiding

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Doug Moreau Dana Cummings Kory J. Tauzin Baton Rouge, LA	Attorneys for Appellee, State of Louisiana
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BEFORE: CARTER, C. J., WHIPPLE AND McDONALD, JJ.

McDonald, J. concurs and will assign reasons.

WHIPPLE, J.

Defendant, Dannie Hayward, was charged by bill of information with three counts of aggravated battery, violations of LSA-R.S. 14:34. Defendant initially pled not guilty by reason of insanity, but withdrew that plea and entered a plea of not guilty. Defendant was tried before a jury, which determined he was guilty as charged. The trial court sentenced defendant to six years imprisonment at hard labor on each count with the sentences to be served concurrently.

We affirm defendant's convictions and sentences.

FACTS

Defendant and his wife, Pamela, separated on April 19, 2005. On October 5, 2005, defendant was residing with his mother at her residence located at 2242 70th Avenue in Baton Rouge.

On October 5, 2005, shortly after she got home from work, Pamela received a phone call from defendant, who claimed that some of his medicine had been delivered to her home, and that he was out of his medicine. Defendant suffered from AIDS and diabetes. According to Pamela, she and defendant were not speaking at this time, and she wanted a divorce.

When defendant called Pamela about his medicine, he also informed her that he wanted to see their son, D.J., who was eleven. Initially, Pamela refused to bring defendant his medicine, but because defendant persisted, Pamela agreed to bring it to him. Sometime between 8:00-9:00 p.m., Pamela, D.J., G.F., defendant's fourteen-year-old stepson, and Annie Rowe, a friend of Pamela's, went to bring defendant his medicine.

When Pamela arrived at defendant's residence, he was standing outside on the carport with another man. After Pamela turned into the

driveway of defendant's mother's house, defendant approached her vehicle. Pamela handed defendant the medicine through the window of her vehicle. Defendant took the medicine, placed it on the ground, and asked Pamela if he could hug D.J. Pamela agreed, and defendant opened the rear door, and D.J. got out. Defendant gave D.J. a hug and spoke to him. Then, defendant proceeded to walk away from Pamela's car with D.J. Pamela asked defendant where he was going with D.J. and told him to bring D.J. back to the car because she had to get him home.

Defendant told Pamela that he wanted to speak privately to his son. Pamela offered to roll up the windows and turn the radio on so defendant could stand near the car. Defendant then told Pamela that he wanted D.J. to see his grandmother (defendant's mother). Pamela agreed, but questioned why defendant was walking away from the residence where D.J.'s grandmother lived.

Pamela got out of her car and told D.J. to come back to her vehicle. D.J. walked back and was directed to get into the car and lock the door. Pamela testified that she told D.J. to lock the car door because, "I just didn't feel right." After D.J. was in the car, Pamela moved to get into the driver's seat and heard defendant running up behind her. Defendant forcefully ran into her and stabbed her in the back. As Pamela turned around to defend herself, defendant continued to stab her. Both D.J. and G.F. got out of the car to come to their mother's aid. Pamela heard both of her sons scream that defendant had a knife.

During the scuffle, Pamela, who was bigger than defendant, was able to get on top of defendant and hold him down while trying to control the knife in his hand. A man from the neighborhood helped Pamela keep defendant subdued until the police arrived.

During the fight, Pamela sustained eight stab wounds, although none were serious enough to require stitches. Both D.J. and G.F. were stabbed, and each received stitches for these wounds at a hospital.

Seth Sinclair, an officer with the Baton Rouge City Police Department, arrived at the scene to find several people holding defendant down on the ground. Officer Sinclair was approached by Pamela, who appeared frantic and told him that defendant had just stabbed her and her children. Officer Sinclair got defendant off the ground and placed him in the back of a unit in order to secure the scene. Officer Sinclair located a knife on the ground next to where defendant had been restrained. Defendant's lip was bleeding and he appeared intoxicated, agitated, and loud.

After being removed from the scene, defendant was taken to a police station where he was advised of his Miranda rights. Defendant indicated he understood these rights and told Officer Sinclair that he tried to kill Pamela, but did not mean to stab his kids. Defendant told Officer Sinclair that he wanted the police to kill him.

Defendant did not testify at trial.

SUFFICIENCY OF THE EVIDENCE

In his first assignment of error, defendant argues the evidence is insufficient to uphold his convictions because the State failed to establish he had the requisite intent to harm or injure any of the victims. Defendant contends that the State's witnesses could not indicate that he harbored any animosity towards any of the victims.

The standard of review for sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude that the State proved the essential elements of the crime beyond a reasonable doubt. LSA-

C.Cr.P. art. 821; Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979).

The offense of aggravated battery consists of the intentional use of force or violence, with a dangerous weapon, upon the person of another. LSA-R.S. 14:33 & 34. The crime requires neither the infliction of serious bodily harm nor the intent to inflict serious injury. The offense does require physical contact whether injurious or merely offensive. It also requires proof only of general intent, or a showing that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act. LSA-R.S. 14:10(2). In general intent crimes, criminal intent necessary to sustain a conviction is shown by the very doing of the acts that have been declared criminal. State v. Howard, 94-0023, p. 3 (La. 6/3/94), 638 So. 2d 216, 217 (per curiam).

Based on the evidence presented at trial, any rational trier of fact could have determined that defendant intentionally used force or violence against all of the victims. Defendant was armed with a knife when he rushed Pamela and repeatedly stabbed her as she was getting into her car to leave. Although defendant argues he had no intent to harm the two children, he did, in fact, stab them, when they came to the aid of their mother. The evidence at trial clearly provided a basis for the jury to have concluded that defendant used intentional force or violence, with a dangerous weapon, against the victims and that it was reasonably certain that defendant would injure his own children when he continued his attack on their mother while the children attempted to protect her. Accordingly, the evidence sufficiently supports defendant's three convictions for aggravated battery.

This assignment of error lacks merit.

CREDIT FOR TIME SERVED

Defendant argues that the trial court erred in failing to give him credit for time served. Although the minutes of the sentencing hearing reflect that defendant was given credit for time served, the transcript fails to reflect such credit. An allowance for credit for time served is mandatory. LSA-C.Cr.P. art. 880. However, the amendment of Article 880 by 1997 La. Acts No. 788, § 1, rendered the giving of credit for time served automatic, without the necessity or formality of the trial court having to so state. State v. Roberts, 98-1706, p. 12 (La. App. 1st Cir. 5/14/99), 739 So. 2d 821, 829-830.

Accordingly, this assignment of error likewise lacks merit.

CONVICTIONS AND SENTENCES AFFIRMED.