

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NATHANIEL LEON BURNS,

Defendant-Appellant.

UNPUBLISHED
October 29, 1996

No. 186803
LC No. 93-006591

Before: Michael J. Kelly, P.J., and Hood and H.D. Soet,* JJ.

PER CURIAM.

A jury convicted defendant of first-degree criminal sexual conduct, MCL 750.520b(1)(f); MSA 28.788(2)(1)(f), and assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. He was sentenced to two concurrent terms of five to ten years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence to support both convictions. We disagree. In reviewing a claim of insufficient evidence, we view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime have been established beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985); *People v Williams*, 212 Mich App 607, 608; 538 NW2d 89 (1995).

In this case, the prosecution presented sufficient evidence to convict defendant of first-degree criminal sexual conduct. At trial, the complainant testified that defendant threatened to harm her if she did have sexual relations with him. A person is guilty of criminal sexual conduct in the first degree if force or coercion is used to accomplish the sexual penetration. MCL 750.520b(1)(f); MSA 28.788(2)(1)(f); *People v Brown*, 197 Mich App 448, 450; 495 NW2d 812 (1992). Additionally, the complainant testified that she was emotional after the rape. Other witnesses also testified that the complainant was very distraught and "almost hysterical" following the rape. Proof of mental anguish is sufficient to show that the complainant suffered personal injury as a result of the rape. MCL 750.520a(j); MSA 28.788 (1)(j); *Brown, supra*, 197 Mich App 451.

* Circuit judge, sitting on the Court of Appeals by assignment.

Similarly, the prosecution presented sufficient evidence to support the conviction of assault with intent to do great bodily harm less than murder. Testimony revealed that defendant pushed the complainant down a flight of stairs, beat her while she laid on the floor and attempted to choke her. Viewing these facts in the light most favorable to the prosecution, a reasonable factfinder could conclude that defendant intended to do great bodily harm less than murder. *People v Lugo*, 214 Mich App 699, 710; ___ NW2d ___ (1995).

Defendant next argues that his convictions violated the double jeopardy clause because both convictions arose out a single assaultive transaction. We reject defendant's argument. Defendant's conviction for assault with intent to do great bodily harm arose from his acts of pushing the complainant down the stairs, beating her while she laid on the floor and attempting to choke her. The conviction for first-degree criminal sexual conduct was based upon defendant's action in threatening to use violence if the complainant did not submit to sexual intercourse and then subjecting the complainant to mental anguish. The assault upon the complainant was complete before defendant raped her, and thus, defendant's convictions did not violate the guarantees of the double jeopardy clause. *Lugo, supra*, 214 Mich App 708.

Lastly, defendant argues that the trial court did not properly instruct the jury that it had to find that two separate assaults occurred in order to find defendant guilty of both counts. Defendant did not object to the jury instructions below and this issue is waived absent manifest injustice. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993); *People v Paquette*, 214 Mich App 336, 339; ___ NW2d ___ (1995). We find no manifest injustice in refusing to review this issue. Two separate assaults occurred and, hence, defendant was properly convicted of both crimes.

Affirmed.

/s/ Michael J. Kelly

/s/ Harold Hood

/s/ H. David Soet