

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RITA MARIE GRUMBLEY,

Defendant-Appellant.

UNPUBLISHED
November 1, 1996

No. 185255
LC No. 94-012723

Before: McDonald, P.J., and Bandstra and C. L. Bosman*, JJ.

PER CURIAM.

Following a waiver trial, defendant was convicted of felonious assault, MCL 750.82; MSA 28.277. Defendant subsequently pleaded guilty to being an habitual offender, second offense, MCL 769.10; MSA 28.1082. She was sentenced to 12 to 72 months in prison. Defendant now appeals as of right and we affirm.

On appeal, defendant argues the prosecution failed to present sufficient evidence to establish she struck the complainant with a dangerous weapon. When reviewing a trial court's ruling on a motion for a directed verdict, this Court must look to the evidence presented up to the time the motion was made. *People v Daniels*, 192 Mich App 658; 482 NW2d 176 (1992). In determining whether the prosecution has presented sufficient evidence, this Court is required to view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287; 519 NW2d 108 (1994).

The test for determining whether a common instrumentality may be classified as a dangerous weapon for purposes of the felonious assault statute is whether the object was used as a weapon and, when so employed in an assault, dangerous. *People v Goolsby*, 284 Mich 375, 378; 279 NW 687 (1938). "The character of a dangerous weapon attaches by adoption when the instrumentality is applied to use against another in furtherance of an assault." *Id.* Generally, whether an instrumentality

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

may be considered a dangerous weapon is a question for the trier of fact to decide. See *People v Bender*, 124 Mich App 571; 335 NW2d 85 (1983).

In the instant case, there was testimony defendant confronted the complainant and accused her of rape. Shortly thereafter, defendant was seen putting ice into a plastic mug. The complainant testified defendant hit her in the face with a white object which she later identified as a mug. The complainant's testimony was corroborated by Doreena Lyons, a unit officer with the Michigan Department of Corrections. Both the complainant and Lyons saw ice fly out of the mug during the assault. After the incident, the complainant was bleeding from her mouth. According to Lyons, defendant told the complainant, "I hope you enjoy blood -- the taste of this blood, bitch."

Viewed in a light most favorable to the prosecution, we find the evidence was sufficient to establish the defendant used the mug in such a manner that it constituted a dangerous weapon under the felonious assault statute. Accordingly, the trial court did not err in denying defendant's motion for a directed verdict, nor was the evidence insufficient to support the felonious assault conviction.

Affirmed.

/s/ Gary R. McDonald
/s/ Richard A. Bandstra
/s/ Calvin L. Bosman