STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REGINALD EARL BELL,

Defendant-Appellant.

UNPUBLISHED
December 17, 1996

No. 184593
Kalamazoo County
LC No. 94-1230-FC

Before: Gribbs, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree criminal sexual conduct, MCL 750.520b(1)(e); MSA 28.788(2)(1)(e), third-degree CSC, MCL 750.520d; MSA 28.788(4), and assault with intent to commit great bodily harm less than murder, MCL 750.84; MSA 28.279. He subsequently pleaded guilty to being an habitual offender, second offense, MCL 769.10; MSA 28.1082. Defendant was sentenced to 25 to 40 years' imprisonment for the first-degree CSC conviction, 12 to 22½years for the third-degree CSC conviction, and 7 to 15 years for the assault conviction. He appeals as of right. We affirm.

This case arises out of a sexual assault which occurred on September 24, 1994 at defendant's residence. The victim and defendant had a thirteen-year-old daughter, but they did not live together at the time of the incident. The victim testified that on the night in question, defendant came to her apartment with some money for their daughter and then invited the victim to his residence to get more money. When they arrived at defendant's house, he pushed the victim down the basement stairs. Defendant then pulled the victim onto his bed, which was in the basement, and removed her pants and underwear. She then went upstairs and tried to leave. Defendant struck her in the face, placed a knife to her throat, and told her that he was going to kill her. He then moved the victim onto a couch, forced himself on top of her, and sexually penetrated her without her consent. After ten or fifteen minutes, defendant told the victim to leave. She went into the basement to gather her clothes when defendant again forced her to engage in nonconsensual sexual intercourse. The victim suffered a black eye, a bruised shoulder, and lacerations to her leg and neck during the incident.

I

On appeal, defendant first claims that the prosecution failed to present sufficient evidence to support his conviction of assault with intent to commit great bodily harm. We disagree. Viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find that the elements for assault with intent to do great bodily harm were proven beyond a reasonable doubt. When reviewing a challenge to the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could find the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). The elements for assault with intent to do great bodily harm less than murder are: (1) an assault, and (2) intent to do great bodily harm less than murder. *People v Harrington*, 194 Mich App 424, 428; 487 NW2d 479 (1992). Defendant admitted that he pushed the victim down the stairs, satisfying the first element. Further, one could infer that defendant intended to seriously injure the victim based on his actions and statements. The victim testified that defendant ordered her into the basement, but she refused. He then pulled her to the top of the stairs and told her that he would push her down if she did not go by the time he counted to five. When defendant got to the fourth count, he pushed her. The victim fell headfirst to the bottom of the stairs onto a cement landing. She asked him to call an ambulance, but he refused. Later, he told her, "I'm going to kill you bitch." Intent can be inferred from all the facts and circumstances. *People v Safiedine*, 163 Mich App 25, 29; 414 NW2d 143 (1987). We find that the prosecution provided sufficient evidence to allow a rational trier of fact to find beyond a reasonable doubt that defendant intended to seriously injure the victim. *Wolfe, supra*, p 515.

II

Defendant next claims that the verdicts on the two CSC convictions were inconsistent and were the result of either a misunderstanding of the jury instructions or a compromise verdict. We disagree. The evidence established that there were two separate instances of criminal sexual conduct. Regarding the first incident on the upstairs couch, the victim testified that defendant placed a knife at her throat just prior to and partially during the assault. With regard to the second incident in the basement, the victim testified that she did not see a knife. In light of this testimony, a rational trier of fact could have concluded beyond a reasonable doubt that defendant was guilty of CSC I for the first offense and guilty of CSC III for the second offense. *Wolfe, supra*, p 515.

III

Defendant also contends that the trial court erred in "correcting" his invalid sentence to comply with the two-thirds rule of *People v Tanner*, 387 Mich 683; 199 NW2d 202 (1972). A review of the record reveals that the judge noted and remedied a *Tanner* problem during the sentencing proceeding and before a sentencing order was issued. Because the sentencing proceeding had not yet concluded, and no judgment ordered, the trial judge could properly correct the potential mistake. MCR 6.435(B).

IV

Defendant next claims that he must be resentenced because the court failed to consider all the proper factors in imposing defendant's sentence. The argument is without merit. The trial judge articulated many appropriate reasons that supported defendant's sentence, and there is no requirement that the trial court articulate every reason for the sentence imposed. *People v Johnson*, 173 Mich App 706, 709; 434 NW2d 218 (1988). We also reject defendant's contention that the trial court failed to articulate reasons for enhancement of his sentence as an habitual offender. The sentencing articulation requirement is satisfied by articulation of reasons for the initial sentence on the underlying offense. *People v Poole*, 186 Mich App 213, 214; 463 NW2d 478 (1990). No new articulation need be made when the defendant is subsequently sentenced as an habitual offender. *Id*.

Defendant argues that his sentence violated the principle of proportionality. We disagree. Based on the nature of the underlying offense and defendant's criminal background, which includes twenty-eight misdemeanors and four felonies, defendant's sentence does not violate the principle of proportionality as set forth in *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990), and the sentencing court did not abuse its discretion. *People v Cervantes*, 448 Mich 620, 627; 532 NW2d 831 (1995).

V

Defendant next contends that the trial court erred in considering a constitutionally infirm juvenile adjudication, and several misdemeanor convictions obtained without the benefit of counsel, in imposing sentence upon defendant. Again, we disagree. With regard to the misdemeanor convictions, defendant failed to object to the contents of the presentence investigation report and thus has failed to preserve the issue for appeal. *People v Hamm*, 206 Mich App 270, 271; 520 NW2d 706 (1994). With regard to the juvenile adjudications, the scoring guidelines indicate that defendant was scored a "0" for all his juvenile adjudications. In addition, the sentencing court made no mention of defendant's juvenile record during sentencing.

VI

Finally, defendant argues that the trial court failed to realize that sentencing enhancement as an habitual offender is purely discretionary with the court. We disagree. The record indicates that the trial judge clearly understood that sentencing included the discretion to sentence defendant as a second offender under the habitual offender act. The trial judge did not make a mistake of law.

Affirmed.

/s/ Roman S. Gribbs
/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin