STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK JON DE YOUNG,

Defendant-Appellant.

UNPUBLISHED
December 27, 1996

No. 183516
LC No. 93-063648-FC

Before: Sawyer, P.J., and Markman and H.A. Koselka,* JJ.

PER CURIAM.

Defendant was convicted by a jury of four counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), and one count of larceny by conversion over $100, MCL 750.362; MSA 28.594. Defendant was sentenced to concurrent terms of fifteen to twenty-five years for each CSC-I conviction and to three to five years for the larceny by conversion conviction. He appeals as of right, challenging the instructions given to the jury and the propriety of his sentence. We affirm.

This case arises out of defendant's and James Boggs' sexual assault upon the victim over the course of several hours on the evening of September 19, 1993. Defendant admitted to police that he engaged in vaginal intercourse with the victim, but insisted that he did so only because he was afraid that Boggs would harm the victim if he did not. Defendant's theory that he simply got caught up in a situation created solely by Boggs was rejected by the jury.

I

Defendant first argues that the trial court erred in denying his request to instruct the jury on the defense of duress. This defense applies when, due to the threatening conduct of another, the defendant was unable to conform his conduct to the requirements of the law. *People v Hubbard*, 115 Mich App 73, 77-78; 320 NW2d 294 (1982). The threatening conduct must be such that it would have created in the mind of a reasonable person the fear of either death or serious bodily injury. *Id.* We agree with

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

the trial court that the evidence presented by defendant was insufficient to support a duress instruction. Specifically, Boggs' threat to harm the victim was directed toward her, not defendant, and Boggs never threatened to harm defendant at all. A reasonable person would not fear death or serious bodily harm in the situation in which defendant found himself.

Because there was no evidence to support the giving of a duress instruction, the trial court properly rejected defendant's request to instruct the jury on the defense. *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994).

II

Defendant next challenges the trial court's instruction to the jury that the defense of voluntary intoxication was not a defense to the crimes with which defendant was charged. As defendant did not object to this instruction, we review this claim for manifest injustice. MCL 768.29; MSA 28.1052; *People v Watkins*, 209 Mich App 1, 4; 530 NW2d 111 (1995).

The defense of voluntary intoxication is available only to specific intent crimes. *People v Langworthy*, 416 Mich 630, 638; 331 NW2d 171 (1982). Because both larceny and larceny by conversion are both specific intent crimes, *People v Hughey*, 186 Mich App 585, 596; 464 NW2d 914 (1990); *People v Martin*, 75 Mich App 6, 21; 254 NW2d 628 (1977), we agree with defendant that the instruction was erroneous. However, reversal is not required because the instruction did not exclude a defense for which there was evidence in support. See *Daniel, supra*, 207 Mich App at 53.

Voluntary intoxication is a defense to a criminal charge when the defendant's degree of intoxication was so great as to render him incapable of forming the requisite intent. *People v Savoie*, 419 Mich 118, 134; 349 NW2d 149 (1984). Although there was evidence that defendant had consumed alcohol on the night in question, the theory of the defense was not intoxication; rather, defendant claimed that he sexually assaulted the victim because he got caught up in Boggs' assault upon her. Insofar as a request for a voluntary intoxication instruction would properly have been denied, the erroneous instruction given here did not result in manifest injustice. See *People v Johnson*, 215 Mich App 658, 672-673; 547 NW2d 65 (1996).

III

Defendant's final argument is that his sentence violates the doctrine of proportionality. We disagree. Defendant has offered nothing to overcome the presumption that his fifteen-year minimum sentence, well within the guidelines minimum sentence range for each of defendant's CSC-I convictions, is neither excessively severe nor unfairly disparate. *People v Broden*, 428 Mich 343, 354; 408 NW2d 789 (1987); *People v Cotton*, 209 Mich App 82, 85; 530 NW2d 495 (1995).

Defendant also complains that his sentence is disproportionate when viewed in light of the seven-year sentence received by Boggs. A trial court is not required to consider the sentence given to a coparticipant in a crime. *In re Jenkins*, 438 Mich 364, 376; 475 NW2d 279 (1991). Moreover, we note that Boggs' seven-year sentence was the result of a plea bargain. Our review of the record leads

us to conclude that defendant's sentence does not violate the doctrine of proportionality. *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990).

Affirmed.

/s/ David H. Sawyer
/s/ Stephen J. Markman
/s/ Harvey A. Koselka