

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER FLOYD STEEN,

Defendant-Appellant.

UNPUBLISHED

January 17, 1997

No. 184549

LC No. 94-012304

Before: Michael J. Kelly, P.J. and Markman and J.L. Martlew,* JJ.

PER CURIAM.

Defendant was convicted, following a waiver trial, of aggravated assault, MCL 750.81A; MSA 28.276(1), and domestic violence, MCL 750.81(2); MSA 28.276(2). Defendant was sentenced to six months imprisonment on each count, to be served concurrently, with credit for 101 days for time served. Defendant was also sentenced to a twenty-four month probation term including psychiatric counseling. Defendant's sentence was also concurrent to any parole violation sentence. Defendant appeals as of right raising two issues.

Defendant argues that the prosecution failed to produce sufficient evidence of aggravated assault. Upon review of the record, we conclude that the prosecution proved "serious or aggravated injury" as required by the statute. The complainant testified that she suffered physical and mental injuries as a result of defendant's attack. She described her injuries including; swelling on her face and head bruised ribs which continued to cause her pain at the time of trial. Complainant further testified that defendant kicked her in the back, causing pain so severe, she could hardly walk and could not return to work. Complainant further testified that she did seek medical treatment.

Defendant did not deny that complainant suffered from these injuries, but claimed they were inflicted by another person at a different time. We affirm the conviction of defendant on the charge of aggravated assault, MCL 750.81Aa MSA 28.276(1).

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

Defendant did not move for a directed verdict or challenge the sufficiency of evidence at trial, however, this court may review such a challenge. *People v Wolfe*, 440 Mich 508, 516 N. 6, 489 NW2d 748 (1992) Mod 441 Mich 1201 (citing *People v Patterson*, 428 Mich 502, 514; 410 NW2d 733 (1987)). This court views the evidence, following a bench trial, in the light most favorable to the prosecution. *People v Petrella* 424 Mich 221, 268-270; 380 NW2d 11 (1985), *People v Hunter* 209 Mich App 280, 282; 530 NW2d 174 (1995). Credibility of the testimony is within the exclusive province of the trier of fact. *People v Herbert*, 444 Mich 466, 474; 511 NW2d 654 (1993).

The testimony of witnesses describing the beating that complainant endured along with the complaints of injuries and disabilities as described by the victim, convinces this court that the prosecution proved beyond a reasonable doubt that the victim suffered serious or aggravated injuries at the hands of the defendant. These injuries inturn, resulted in an impairment of health and or of the body. *People v Brown*, Mich App 606, 611; 296 NW2d 121 (1980).

Defendant next claims that the conviction by the trial court on both the aggravated assault and domestic violence was error, because both convictions were the result of the same transaction under two statutes which share common elements. This Court agrees.

This Court will review the issue, even though defendant failed to raise it at trial; as a significant constitutional question. *People v Passeno*, 195 Mich App 91, 95; 489 NW2d 152 (1992). Questions of law, including double jeopardy issues, are reviewed de Novo. *People v Torres*, 209 Mich App 651, 658; 531 NW2d 822 (1995).

The U.S. Constitution as well as the Michigan Constitution, US Const, Am 5; Const 1963, Art 1, Sec 15, protects against placing a defendant in jeopardy twice for the same offense. In *North Carolina v Pearce*, 395 US 711; 895 CT 2072; 23 L Ed2d 656 (1969), the U.S. Supreme Court held that the constitution protects against multiple punishment for the same offense. This protection was held applicable to the states in, *Benton v Maryland*, 395 US 784; 89 S Ct 2056; 23 L Ed2d 707 (1969). The Michigan Constitution offers broader protection, *People v Carter*, 415 Mich 558, 582; 330 NW2d 314 (1982), than the federal counterpart, although worded almost identically.

The double jeopardy protection prevents defendant from being subjected to more punishment than authorized by statute. *People v Sturgis*, 27 Mich 392, 399; NW2d 783 (1986). Where two statutes prohibit violations of the same social norm it can be concluded that the Legislature did not intend multiple punishment. *People v Rabideau*, 419 Mich 458, 486; 355 NW2d 592 (1984).

Defendant's conviction under both statutes, MCL 750.81A; MSA 28.276(1), and MCL 750.81(2); MSA 28.276(2), protects the same social norm and proscribes similar conduct. The trial court violated the constitutional prohibition against double jeopardy by convicting defendant of both domestic violence and aggravated assault. This Court vacates the defendant's conviction for the lesser offense, domestic violence. *People v Harding*, 443 Mich 693, 714; 506 NW2d 582 (1993).

Defendant's conviction and sentence on the charge of aggravated assault, MCL 750.81A; MSA 28.276(1), is affirmed. The conviction and sentence on the charge of domestic violence MCL 750.81(2); MSA 28.276(2) is reversed.

Affirmed in part, reversed in part.

/s/ Michael J. Kelly

/s/ Stephen J. Markman

/s/ Jeffrey L. Martlew