

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER C. SMEDLEY,

Defendant-Appellant.

UNPUBLISHED

November 21, 1997

No. 194250

Allegan Circuit Court

LC No. 95-009716-FH

Before: White, P.J., and Cavanagh and Reilly, JJ.

PER CURIAM.

Defendant was convicted by a jury of one count of felonious assault, MCL 750.82; MSA 28.277, one count of simple assault, MCL 750.81; MSA 28.276, and malicious destruction of a building over \$100, MCL 750.380; MSA 28.612. Defendant appeals as of right, and we affirm.

I

Defendant first argues that the evidence presented was insufficient to support his conviction of felonious assault. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

Conviction of felonious assault requires proof of (1) an assault, (2) with a dangerous weapon, (3) with the intent to injure or place a victim in reasonable fear or apprehension of an immediate battery. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996).

The complainant testified that defendant was renting a duplex from him. At defendant's request the complainant met him at the duplex because he was moving out. As the complainant was getting ready to leave, defendant demanded the immediate return of his security deposit, and the complainant refused because some repairs were needed. Defendant then grabbed a wooden cross or clock and

raised it in the air. The complainant testified that when this occurred, he thought that defendant was threatening to hit him, and he was concerned for his safety. We conclude that the complainant's testimony constitutes sufficient evidence to prove the essential elements of felonious assault beyond a reasonable doubt.

Defendant argues that his action of raising a large object over his head in a threatening manner should have been construed as an "implicit request" that the victim leave his home, and that he had the right to use reasonable force to compel his landlord to leave his property. We disagree. Intent may be inferred from all the facts and circumstances. *People v Lugo*, 214 Mich App 699, 709; 542 NW2d 921 (1995). In the present case, defendant cites no testimony, and we have found none, to support his contention that he was merely asking the complainant to leave. The complainant testified that he was in fact attempting to leave when defendant seized the clock and threatened him. Defendant himself testified that he raised the object in order to defend himself from the complainant's son. Under the circumstances, we find no error requiring reversal.

II

Next, defendant maintains that the evidence was insufficient to support the conviction of malicious destruction of a building. MCL 750.380; MSA 28.612 provides that a person shall not "wilfully and maliciously destroy or injure any house, barn, or building of another." Defendant concedes that he damaged the property. However, he asserts that the conviction was improper because defendant was a tenant of the property and had a possessory interest in it. Defendant argues that the property destroyed was therefore not the property "of another."

Defendant has confused the concepts of "ownership" and "possession." See *Merritt v Nickelson*, 80 Mich App 663, 667; 264 NW2d 89 (1978), aff'd 407 Mich 544; 287 NW2d 178 (1980). A tenant has the right to possession of the premises in question. See *Frenchtown Villa v Meadors*, 117 Mich App 683, 689; 324 NW2d 133 (1982). However, the tenant does not thereby become the owner of the property. Moreover, the tenant has no right to make material or permanent alterations in the leased premises without the landlord's consent. *Pearson v Sullivan*, 209 Mich 306, 314-315; 176 NW 597 (1920). Evidence produced at trial established that defendant was the complainant's tenant. Accordingly, there was sufficient evidence to establish that defendant damaged the property "of another."

Defendant relies on *Adkin v Pillen*, 136 Mich 682; 100 NW 176 (1904). However, we do not find *Adkin* to be relevant because it was a lawsuit based on malicious prosecution. Moreover, to the extent that the underlying facts in that case are relevant, they are distinguishable. In *Adkin*, the criminal charges against the plaintiff had been dismissed because the plaintiff's wife owned the damaged property, and the plaintiff's actions were found to have been authorized by her. *Id.* at 683-684. In the present case, there is no evidence that the owner of the property authorized defendant's actions.

In sum, we find that sufficient evidence was presented to support defendant's conviction of malicious destruction of a building.

III

Defendant contends that the trial court's instructions on the charge of malicious destruction of a building were deficient and require reversal. Specifically, defendant complains that the trial court ignored his possessory interest in the property and did not instruct the jury that it must decide whether the property damaged belonged to defendant or "another." Because defendant failed to object to the jury instructions, any error is waived unless relief is necessary to avoid manifest injustice. See *People v Turner*, 213 Mich App 558, 576; 540 NW2d 728 (1995). Manifest injustice is not present in this case. As discussed in the preceding issue, despite his possessory interest, the damaged property did not belong to defendant.

IV

Finally, defendant argues that the trial court erred in excluding evidence of his repairs to the damaged property. To preserve an evidentiary issue for review, a party must object at trial and specify the same ground for objection which it asserts on appeal. *In re Weiss*, 224 Mich App 37, 39; 568 NW2d 336 (1997). In the trial court, defendant argued that the trial court should reserve ruling on the prosecutor's motion to exclude the evidence because it might become relevant as facts emerged during trial. On appeal, he argues that the trial court should have denied the motion because the evidence was relevant to whether the property was that "of another." Because on appeal defendant has not challenged the trial court's ruling on the same basis as at trial, this issue is not preserved for appellate review. See *id.* Because we find that failure to review this issue will not lead to manifest injustice, we decline to address it. See *People v Grant*, 445 Mich 535, 547; 520 NW2d 123 (1994).

Affirmed.

/s/ Helene N. White
/s/ Mark J. Cavanagh
/s/ Maureen Pulte Reilly