

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BOBBY E. KENNEDY,

Defendant-Appellant.

UNPUBLISHED

January 13, 1998

No. 199980

Recorder's Court

LC No. 95-013113 FY

Before: Gage, P.J., and Murphy and Reilly, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial conviction for felonious assault, MCL 750.82; MSA 28.277. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

As trier of fact, the trial judge found that defendant, without justification or excuse, struck the victim with a bottle, then subsequently kicked him. The trial court correctly concluded that the striking of the victim with a bottle constitutes the crime of felonious assault. While the bottle might not of itself be a dangerous weapon, when used to inflict actual injury, as occurred in this case, the dangerous character of the instrumentality for purposes of satisfying the elements of felonious assault is established. *People v Vaines*, 310 Mich 500, 505; 17 NW2d 729 (1945); *People v Goolsby*, 284 Mich 375, 378; 279 NW 867 (1938). As defendant concedes on appeal that the other elements of felonious assault were established, a rational trier of fact could have found defendant's guilt of the charge proved beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 269-270; 380 NW2d 11 (1985).

Defendant contends that the trial court erred in permitting improper impeachment of a non-alibi defense witness on the basis of her failure to volunteer information to the authorities prior to trial. Assuming that this was error, no mention of such impeachment testimony was made by the trial court in rendering its findings of fact or commenting on the credibility of witnesses. In the absence of some indication that the trial court gave any weight to the supposedly improperly admitted evidence, any error in this regard was harmless. *People v Jones*, 134 Mich App 371, 373; 350 NW2d 885 (1984).

Affirmed.

/s/ Hilda R. Gage

/s/ William B. Murphy

/s/ Maureen Pulte Reilly