

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

BENJAMIN WALKER, a/k/a BENJAMIN
WALKER, JR.,

Defendant-Appellant.

UNPUBLISHED

July 5, 2002

No. 230872

Oakland Circuit Court

LC No. 99-169975-FH

Before: Hood, P.J., and Saad and E. M. Thomas,* JJ.

MEMORANDUM.

Defendant appeals as of right from his conviction for assault with intent to do great bodily harm less than murder, MCL 750.84. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal defendant argues that the evidence presented at trial was insufficient to convict him of assault with intent to do great bodily harm less than murder because there was no evidence that defendant intended to inflict a serious and permanent bodily injury upon the victim. We disagree.

The elements of assault with intent to do great bodily harm less than murder are: (1) an attempt or threat with force or violence to do corporal harm to another, and (2) the specific intent to do great bodily harm less than murder. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997), lv den 459 Mich 971 (1999); *People v Harrington*, 194 Mich App 424, 428; 487 NW2d 479 (1992), lv den 441 Mich 876 (1992). The crime does not require that the victim suffer an actual physical injury. *Harrington*, 194 Mich App 430. The testimony presented at trial indicated that defendant knocked the victim down and attempted to smother her by pushing her face into a pillow. When the victim managed to turn over defendant tried to smother her with a towel and told her that nobody would know that he killed her. Defendant's actions and words strongly indicate that he was attempting to kill the victim or asphyxiate her to the point of causing a permanent injury. Viewing this evidence in a light most favorable to the prosecutor, a rational jury could conclude beyond a reasonable doubt that defendant performed this assault with the specific intent to inflict great bodily harm. *People v Jolly*, 442 Mich 458, 465-466; 502 NW2d 177 (1993); *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979).

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

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Edward M. Thomas