

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of Anthony McCormick, Minor.

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PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee,

v

ANTHONY McCORMICK,

Defendant-Appellant.

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UNPUBLISHED

February 19, 1999

No. 202415

Wayne Juvenile Court

LC No. 92-299798

Before: Markman, P.J., and Bandstra and J.F. Kowalski\*, JJ.

MEMORANDUM.

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

A petition was filed charging defendant with assault with intent to commit great bodily harm. The charge was based upon a beating in which defendant punched the victim, then tripped him and kicked him approximately ten times. At trial, defense counsel conceded the assault, but asserted that defendant should be found guilty of only assault and battery, aggravated assault or felonious assault. Defendant was found guilty of felonious assault.

On appeal, defendant argues that he was improperly convicted of a lesser included offense of which he lacked proper notice. A trial court has no authority to convict a defendant of an offense not specifically charged unless the defendant has had adequate notice. *People v Adams*, 202 Mich App 385, 387; 509 NW2d 530 (1993). However, a defendant is not precluded from requesting a lesser included offense even if the charging document does not mention each fact required to convict on that offense. *People v Chamblis*, 395 Mich 408, 418-419; 236 NW2d 473 (1975), overruled on other grounds, *People v Stephens*, 416 NW2d 252; 330 NW2d 675 (1982). Where defendant raised the alternative of a felonious assault conviction, he has waived any claim as to improper notice.

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

Felonious assault requires a finding that the defendant committed an assault with a dangerous weapon. MCL 750.82; MSA 28.277. In *People v Buford*, 69 Mich App 27; 244 NW2d 351 (1976), this Court held that a boot may be considered a dangerous weapon when the defendant used it to stomp on a prone victim. In *People v Hale*, 96 Mich App 343; 292 NW2d 204 (1980), vacated on other grounds, 409 Mich 937; 298 NW2d 421 (1980), the Court held that a shoe could supply the dangerous weapon element of the statute where the defendant kicked the victim in the chest and groin. Where there was testimony that defendant kicked the victim in the head and back approximately ten times after he had fallen to the ground, there was sufficient evidence to support the felonious assault conviction.

Affirmed.

/s/ Stephen J. Markman

/s/ Richard A. Bandstra

/s/ John F. Kowalski