

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CONNIE ANN COFFMAN,

Defendant-Appellant.

UNPUBLISHED

October 11, 2002

No. 234462

Kalkaska Circuit Court

LC No. 00-002061-FH

Before: Hood, P.J., and Whitbeck, C.J., and O'Connell, J.

PER CURIAM.

Following a jury trial, defendant was convicted of extortion, MCL 750.213. She was sentenced as a habitual offender third, MCL 769.11, to 48 to 480 months imprisonment, with credit for 56 days served. Defendant now appeals as of right. We affirm.

This case arose when defendant allegedly threatened a woman in a gas station, Kelly Burch, with bodily harm unless Burch turned over defendant's money to defendant. Defendant claimed the money was hers and that Burch had stolen it. Burch responded that she did not take defendant's money and did not know what she was talking about. Defendant shoved Burch during the altercation. The police were called and defendant maintained that Burch had stolen her money. Nevertheless, defendant was arrested and charged with extortion.

During deliberations at trial, the jury asked the trial judge to define extortion and whether it was relevant if defendant claimed the money in question was hers. The trial judge re-read the jury instruction defining extortion, and answered the second question in the negative. Defendant objected, the objection was denied, and this appeal followed.

Defendant first claims that in responding to the jury that defendant's intent did not matter, the trial court impermissibly assumed the jury's function, denied defendant due process, and denied defendant a fair trial. We disagree.

These overarching issues of law, including constitutional questions, are reviewed de novo, *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998), while we review the trial court's specific supplemental jury instructions in this case for an abuse of discretion. *People v Malach*, 202 Mich App 266, 276; 507 NW2d 834 (1993). "This Court reviews jury instructions in their entirety to determine if there is error requiring reversal." *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994). If the instructions as a whole fairly presented the issues to be

tried and sufficiently protected the defendant's rights, no error occurs even where the instructions are not perfect. *Id.*; *People v Davis*, 216 Mich App 47, 54; 549 NW2d 1 (1996); *People v Bell*, 209 Mich App 273, 276; 530 NW2d 167 (1995).

MCL 750.213 provides:

Any person who shall, either orally or by a written or printed communication, maliciously threaten to accuse another of any crime or offense, or shall orally or by any written or printed communication maliciously threaten any injury to the person or property or mother, father, husband, wife or child of another with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do or refrain from doing any act against his will, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 20 years or by a fine of not more than 10,000 dollars.

The intent element of extortion is described in the criminal jury instruction:

Third, that the defendant made the threat willfully, without just cause or excuse, and with the intent to [get money by doing it / make the person threatened do / not do something against the person's will / (*state other goal*)]. [CJI2d 21.1.]

Thus, defendant's defense is of no consequence to the charge of extortion. *Id.*; see also CJI2d 21.3 (definition of a threat); *People v Maranian*, 359 Mich 361, 369; 102 NW2d 568 (1960) ("The collection of a valid, enforceable debt does not permit malicious threats of injury to one's person, loved ones, or property if payment is not made."), cited in *United States v French*, 628 F2d 1069, 1075 (CA 8, 1980) ("[O]ne who takes money extortionately cannot defend on the basis that the money collected thereby was in satisfaction of a legitimate debt."). Moreover, the definition of "malice" also precludes a claim of right defense. See CJI2d 21.3 (definition of a threat); Black's Law Dictionary (7th ed) (malice defined as "[t]he intent . . . to commit a wrongful act."). This is especially true given that in this case, defendant verbally harassed Burch for the claimed money and physically assaulted her. Put another way, even if defendant was correct that Burch had her money, extortion and an assault were not justified. Therefore, defendant was not deprived of her right to due process or a fair trial by the trial court's answer to the jury's questions. See *Malach, supra*.

Next, defendant claims that there was insufficient evidence to sustain her conviction on the sole basis that defendant made an immediate threat to the complainant, not a future one. Again, we disagree.

When reviewing a sufficiency of the evidence challenge, this Court considers the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the crime were proven beyond a reasonable doubt. *People v Head*, 211 Mich App 205, 210; 535 NW2d 563 (1995). First, we note that defendant's reliance on *People v Krist*, 97 Mich App 669; 296 NW2d 139 (1980), is not compelling because another panel of this Court disagreed with that case in *People v Fobb*, 145 Mich App 786, 789-790; 378 NW2d 600 (1985). Further, published opinions released before November 1, 1990, including *Krist, supra*, are not binding on this Court. See MCR 7.215(I)(1). Second, defendant argues that *Krist, supra* at 675-676, establishes that defendant's immediate threats to Burch make

defendant's crime unarmed robbery or misdemeanor assault and battery. Defendant contends that only a threat of future harm constitutes extortion.

This argument fails. Again, the statutory crime of extortion does not require that the threat be a future one. MCL 750.213; see also CJI2d 21.1; CJI2d 21.3. "When the charge is one of extortion arising out of a compelled action or omission . . . a conviction may be secured upon the presentation of proof of the existence of a threat of immediate, continuing, or future harm." *People v Hubbard*, 217 Mich App 459, 485; 552 NW2d 493 (1996) (emphasis added); see also *Fobb, supra*. Therefore, because defendant's admitted statement to the complainant in this case, Burch, was an immediate threat, it qualified as extortion. See *Head, supra*.

Affirmed.

/s/ Harold Hood
/s/ William C. Whitbeck
/s/ Peter D. O'Connell