STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 28, 2004
v	No. 248652 Livingston Circuit Court
TONY JAMES SUTTON, Defendant-Appellant.	LC No. 02-013156-FH

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of domestic violence, MCL 750.81(2), and was sentenced to 93 days in jail with credit for 93 days served. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that there was insufficient evidence to establish domestic violence. He asserts that although he may have hit the victim's arm, he did not do so with violence or with the "intense, rough, injurious, or uncontrolled force intended to batter." Although specific intent is required to establish domestic violence, *People v Corbiere*, 220 Mich App 260, 266; 559 NW2d 666 (1996), defendant does not accurately describe the specific intent needed. The prosecution needed to show an intent to batter or place the victim in reasonable apprehension of being battered. *Id*. In *People v Reeves*, 458 Mich 236, 240 n 4; 580 NW2d 433 (1998), our Supreme Court noted that "[a] battery is an intentional, unconsented and harmful or offensive touching of the person of another, or of something closely connected with the person." The evidence established that defendant hit the victim's arm and subsequently grabbed her and pulled her to him. The evidence did not indicate that this was accidental or that the victim consented, and the victim's testimony established harm and offensiveness. A rational trier of fact could have found beyond a reasonable doubt that this intentional touching was harmful and offensive. See *People v Fennell*, 260 Mich App 261, 270; 677 NW2d 66 (2004).

Defendant next argues that he was denied due process by the trial court's failure to instruct that domestic violence was a specific intent crime. Further, he asserts that intoxication is a defense to a specific intent crime and that an intoxication instruction should therefore have been given with respect to this offense. However, defense counsel affirmed the trial court's understanding that for the domestic violence charge, "[defense counsel] doesn't care or even—doesn't even want the specific intent instruction." Defense counsel further stated that no

supplemental instructions were needed. Because defendant intentionally relinquished any right to the contested jury instruction, he waived the issue, extinguished any potential error, and cannot obtain appellate review of this issue. *People v Hall (On Remand)*, 256 Mich App 674, 679; 671 NW2d 545 (2003).

We affirm.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra