STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 12, 1999
v	No. 211199 Washtenaw Circuit Court
SACHA TOMAZ PLATT, Defendant-Appellant.	LC No. 97-007570 FC

Before: Holbrook, Jr., P.J., and Smolenski and Collins, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of breaking and entering a vehicle with damage to the vehicle, MCL 750.356a; MSA 28.588(1). We affirm.

Defendant first argues that his waiver of a jury trial was not valid. We disagree. We review a trial court's determination that a defendant validly waived his right to a jury trial for clear error. *People v Leonard*, 224 Mich App 569, 595; 569 NW2d 663 (1997).

MCR 6.402(B) provides:

> Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

We find that the trial judge clearly advised defendant that a jury trial is a right guaranteed by the Constitution and ascertained that defendant was not under any form of duress or coercion in waiving that right. Furthermore, defendant indicated that he had discussed his decision with defense counsel. We also reject defendant's contention that the waiver was invalid because the judge accepted the waiver without explaining the difference between a jury trial and a bench trial. In *Leonard*, we reiterated our holding in *People v James (After Remand)*, 192 Mich App 568, 570; 481 NW2d 715 (1992), that "a trial court is not required to explain the unanimity required in a jury trial as compared to

a bench trial …." *Leonard, supra,* 596. Accordingly, we find that defendant freely and knowingly waived his right to a jury trial.

Defendant next argues that the prosecution failed to put forth sufficient evidence to prove beyond a reasonable doubt that defendant committed the charged offense. We disagree. Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have concluded that all of the elements of the offense were proven beyond a reasonable doubt. *People v Jones (On Rehearing)*, 201 Mich App 449, 451; 506 NW2d 542 (1993). Defendant was convicted of aiding and abetting the breaking and entering of a vehicle. The aiding and abetting statute, MCL 767.39; MSA 28.979, provides in pertinent part:

> Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense.

The evidence established beyond a reasonable doubt that defendant was guilty of the charged offense. Defendant was the driver of the vehicle whose occupants broke into the decoy vehicle and stole the cellular phone. Defendant was the only person observed driving the vehicle that facilitated the theft. Defendant made an initial pass through the bowling alley parking lot. He drove within ten feet of the decoy vehicle and waited as two of the other suspects broke the window and took the cellular phone. Defendant then picked up the two suspects, exited the parking lot, and briefly parked in an adjacent parking lot before returning to the bowling alley parking lot.

The circumstantial evidence strongly suggests that defendant aided and abetted the breaking and entering a vehicle to steal a cellular phone in contravention of MCL 750.356a; MSA 28.588(1). Judge Wilder, the factfinder in this case, assessed the credibility of all testimony, including defendant's, and concluded that defendant was not believable. Judge Wilder personally questioned defendant regarding defendant's assertion that he had merely been trying to find a parking place to attend the basketball game. Judge Wilder also questioned defendant with respect to the sirens he allegedly heard and which resulted in his return to the scene. When the evidence is viewed in the light most favorable to the prosecution, we find that the trial judge, as a rational trier of fact, correctly concluded that the essential elements of the charged offense were proven beyond a reasonable doubt.

Defendant next argues that the trial court improperly shifted the burden of proof to defendant by stating in his findings that defendant's explanations were inadequate to negate the circumstantial evidence against him. We disagree. The burden of proof in all criminal cases is upon the prosecution. "Even in a case relying on circumstantial evidence, the prosecution need not negate every reasonable theory consistent with the defendant's innocence, but merely introduce evidence sufficient to convince a reasonable jury in the face of whatever contradictory evidence the defendant may provide." *People v Konrad*, 449 Mich 263, 273, n 6; 536 NW2d 517 (1995). Here, in Judge Wilder's decision from the bench, he first stated his conclusion that the prosecutor proved his case against defendant beyond a reasonable doubt. Judge Wilder then explained the rationale behind his decision. Thereafter, he analyzed defendant's theory of the case and found it to lack credibility. When Judge Wilder stated that,

"[T]he Court finds that there can be no other reasonable interpretation of what the driver's intention was than to assist in the commission of the crime that occurred," he was simply commenting on the incredulousness of defendant's version of events. As the finder of fact, it is the trial court's responsibility to judge the credibility of each witness. *People v Snell*, 118 Mich App 750, 755-756; 325 NW2d 563 (1982). Accordingly, we hold that the trial judge did not improperly shift the burden of proof onto defendant.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Michael R. Smolenski
/s/ Jeffrey G. Collins