STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 24, 2001
v	No. 222605 Shiawassee Circuit Court
GARY WAYNE MEARS, Defendant-Appellant.	LC No. 98-002388-FH

Before: Hood, P.J., and Whitbeck, and Meter, JJ.

PER CURIAM.

Defendant appeals by right from his convictions by a jury of larceny from a motor vehicle, MCL 750.356a, and conspiracy to commit the same offense, MCL 750.157a. The trial court sentenced him to two concurrent terms of two to five years' imprisonment. We affirm.

Defendant argues that the prosecutor presented insufficient evidence to support his conspiracy conviction. In evaluating a claim of insufficient evidence, we view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999). We will not interfere with the jury's determination regarding the weight of the evidence or the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 478, amended 441 Mich 1201 (1992).

The crux of the offense of conspiracy is the unlawful agreement between two or more persons to commit a crime. *People v Blume*, 443 Mich 476, 481; 505 NW2d 843 (1993). "Establishing a conspiracy requires evidence of specific intent to combine with others to accomplish an illegal objective." *Id*. However, direct proof of the conspiracy is not required. *People v Justice (After Remand)*, 454 Mich 334, 347; 562 NW2d 652 (1997). Instead, the circumstances, acts, and conduct of the parties may be used to establish the offense, *id.*, and a *formal* agreement need not be proven. *People v Taurianen*, 102 Mich App 17, 31; 300 NW2d 720 (1980).

In this case, viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence for the jury to find that defendant agreed to commit larceny with Jeremy Lee. Lee testified that he and defendant stopped at a car dealership so that Lee could urinate. They

parked beside a "sharp lookin'" pickup truck. Lee testified that he and defendant saw the truck and:

> Well, between me and [defendant] and Jerod and the rest of 'em, we had a little, you know, thing that we said. We'd say, "You know, I betcha' that's got [a] stereo. . . . So when I went to the bath – I parked next to the truck, and I went to the bathroom.
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> I went in and I said something to [defendant] about, you know, it had a stereo, and we kinda, you know, he got out and we come – he come around the one side, you know, where I was, to the truck, and he had either – it was a screwdriver or a pry bar or somethin' to where he could break a window.

Lee testified that he and defendant ultimately removed and took various items from the truck. Lee's testimony was sufficient for the jury to find beyond a reasonable doubt that defendant and Lee had an implied agreement to steal items from the truck. See *People v Bettistea*, 173 Mich App 106, 117; 434 NW2d 138 (1988) (indicating that the agreement supporting a conspiracy conviction may be an implied agreement). As stated in *Taurianen, supra* at 31, "[a] conspiracy may be established by circumstantial evidence and may be based upon inference." Here, the words and actions of defendant and Lee supported a fair inference that just prior to the larceny, the two men conspired to steal items from the truck in question. Reversal based on evidentiary insufficiency is unwarranted.

Next, defendant contends that the trial court ordered an inordinately high amount of restitution when it awarded the restitution amount reflected in the presentence report. Defendant contends that in light of the joint actions of him and Lee, he should be required to pay, at most, for only one-half the damage to the truck. He further contends that the trial court failed to consider the salvage value of the truck's wheels and tires in determining the restitution amount. However, defendant did not object to the restitution amount at sentencing and thus failed to preserve this issue. *People v Griffis*, 218 Mich App 95, 103-104; 553 NW2d 642 (1996). Accordingly, to be entitled to appellate relief, defendant must show a plain error affecting his substantial rights. *People v Coy*, 243 Mich App 283, 287; 620 NW2d 888 (2000).

We find no such plain error affecting defendant's substantial rights. First, it was proper for the trial court to hold defendant liable for the entire damages resulting from the joint actions of him and Lee, especially considering the conspiracy conviction. *People v Grant*, 455 Mich 221, 235-237; 565 NW2d 389 (1997); see also *People v Peterson*, 62 Mich App 258, 267-277; 233 NW2d 250 (1975). Second, the court was entitled to rely on the presentence report in determining the amount of restitution.[1] See, e.g., *Grant, supra* at 235. Finally, defendant did not establish his burden of showing that the wheels and tires had value. See *People v Carines*, 460

[1] We note that defendant did not present information supporting a different restitution amount.

Mich 750, 763; 597 NW2d 130 (1999) (explaining the defendant's burden in cases of unpreserved alleged error). A change in the restitution amount is unwarranted.

Affirmed.

/s/ Harold Hood
/s/ William C. Whitbeck
/s/ Patrick M. Meter