STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 25, 2002
v	No. 232096 Jackson Circuit Court
PHILLIP RONALD HULL, JR., Defendant-Appellant.	LC No. 00-005243-FC

Before: Talbot, P.J., and Whitbeck, C.J., and Gage, J.

PER CURIAM.

Defendant was charged with armed robbery, MCL 750.529, first-degree home invasion, MCL 750.110a, unlawfully driving away an automobile (UDAA), 750.413, and third-degree fleeing and eluding a police officer, MCL 750.479a(3). Defendant pleaded guilty to the home invasion, UDAA, and fleeing and eluding charges as a third habitual offender, MCL 769.11. Following a jury trial, defendant was convicted of armed robbery. The trial court sentenced defendant as a third habitual offender to twenty-five to fifty years' imprisonment for the armed robbery conviction, twenty to forty years' imprisonment for the home invasion conviction, four to ten years' imprisonment for the UDAA conviction, and four to ten years' imprisonment for the fleeing and eluding conviction. Defendant appeals as of right. We affirm.

Defendant first challenges the sufficiency of the evidence supporting his armed robbery conviction. Defendant argues that the evidence was insufficient to establish that defendant was armed with a dangerous weapon or that he used or fashioned an article to lead the complainant to reasonably believe it to be a dangerous weapon. We disagree.

"[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002), quoting *People v Wolfe*, 440 Mich 508, 513-514; 489 NW2d 748, amended 441 Mich 1201 (1992). See *People v Hardiman*, 466 Mich 417, 420; 646 NW2d 158 (2002); *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000). Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999); *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000); *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

"The elements of armed robbery are: (1) an assault, (2) a felonious taking of property from the victim's presence or person, (3) while the defendant is armed with a weapon described in the statute." *Carines*, *supra* at 757. The armed robbery statute reads in pertinent part:

> Any person who shall assault another, and shall feloniously rob, steal and take from his person, or in his presence, any money or other property, which may be the subject of larceny, such robber being armed with a dangerous weapon, or any article used or fashioned in a manner to lead the person so assaulted to reasonably believe it to be a dangerous weapon, shall be guilty of a felony . . . . [MCL 750.529.]

People v Jolly, 442 Mich 458, 461; 502 NW2d 177 (1993); *People v Taylor*, 245 Mich App 293, 294; 628 NW2d 55 (2001).

A complainant's belief that a defendant was armed must be reasonable and the complainant's subjective belief alone is insufficient to support a conviction of armed robbery. *Jolly*, *supra* at 468. "Therefore, the prosecutor must submit 'some objective evidence of the existence of a weapon or article' to the finder of fact." *Taylor*, *supra* at 298, quoting *Jolly*, *supra* at 468. "The existence of some object, whether actually seen or obscured by clothing or something such as a paper bag, is objective evidence that a defendant possesses a dangerous weapon or an article used or fashioned to look like one. Related threats, whether verbal or gesticulatory, further support the existence of a weapon or article." *Taylor*, *supra*, citing *Jolly*, *supra* at 469-470.

Here, the prosecution presented evidence in the form of testimony from both the complainant and defendant that defendant had needle-nosed pliers in his hand as he demanded money from the complainant. The complainant testified that defendant had a metal object in his hand. The complainant first believed that defendant had a gun, and as defendant moved closer to him, the complainant believed that it was a knife. When defendant took cash out of complainant's hand, complainant saw that it was a metal object. Defendant had the metal object in his hand and ordered the complainant to give him money. The record indicates that both defendant and the complainant gestured to demonstrate the movement of defendant's hands at the time he demanded money.

We conclude that the prosecution presented sufficient evidence to prove the "armed" element of armed robbery. The evidence that defendant had needle-nosed pliers in his hand which the complainant perceived as a weapon of some sort, and that defendant moved his arms in some way as he demanded money, is sufficient objective evidence that could lead the complainant to believe that defendant possessed a gun or other dangerous weapon. It is not necessary that a defendant "verbally threaten the victim with some specific bodily harm in order to obtain a conviction of armed robbery." *Taylor*, *supra* at 302-303. "If there is sufficient evidence that, during the course of the robbery, the defendant simulates a weapon so as to induce the victim to reasonably believe he is armed and, by word or conduct, threatens the victim by announcing a robbery or otherwise suggesting the potential use of the weapon, then the defendant may be convicted of armed robbery." *Id.* at 303. Here, there was objective evidence that defendant had needle-nosed pliers in his hand and that he moved his arms in some way as he demanded money from the complainant. We conclude that a rational jury could find beyond a

reasonable doubt that defendant used the pliers as a weapon. The evidence was sufficient to support defendant's conviction for armed robbery.

Defendant also argues that the trial court failed to recognize its discretion in sentencing, and improperly based defendant's sentence, in part, on defendant's inculpatory admissions to police because they were induced by a false or unfulfilled promise of leniency. We disagree.

Nothing in the record suggests that the trial court was unaware of its discretion in sentencing defendant. See *People v Knapp*, 244 Mich App 361, 389; 624 NW2d 227 (2001). Further, apart from defendant's admissions to police allegedly made in exchange for promises of leniency, defendant admitted at trial that he had broken into homes on "quite a few" occasions. Accordingly, these other offenses were part of the trial record and the court's consideration of them in sentencing defendant was proper. See *People v Ewing (After Remand)*, 435 Mich 443, 446 (Brickley, J.), 473 (Boyle, J.), 458 NW2d 880 (1990); *People v Parr*, 197 Mich App 41, 46; 494 NW2d 768 (1992); *People v Coulter (After Remand)*, 205 Mich App 453, 456; 517 NW2d 827 (1994). Further, the sentencing transcript clearly indicates that the trial court considered only three other break-ins. We find no error.

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Hilda R. Gage