STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 27, 2004
v	No. 242077 Oakland Circuit Court
GUS A. KASSAB, Defendant-Appellant.	LC No. 01-180285-FH

Before: Smolenski, P.J., and Saad and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction for insurance fraud, MCL 500.4511(1), MCL 500.4503(d). Defendant was sentenced, as a second habitual offender, MCL 769.10, to eighteen months' probation and $3,940 in fines and costs. We affirm.

Defendant's only claim on appeal is that insufficient evidence existed to find him guilty beyond a reasonable doubt. We disagree. To determine if sufficient evidence existed for a conviction following a bench trial, this Court must view the evidence in a light most favorable to the prosecution and decide if a rational trier of fact could find guilt beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

MCL 500.4511(1) provides that a person who commits a fraudulent insurance act under section 4503 is guilty of a felony. MCL 500.4503 provides, in pertinent part:

> A fraudulent insurance act includes, but is not limited to, acts or omissions committed by any person who knowingly, and with an intent to injure, defraud, or deceive:
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> * * *
>
> (d) Assists, abets, solicits, or conspires with another to prepare or make any oral or written statement including computer-generated documents that is intended to be presented to or by any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false information concerning any fact or thing material to the claim.

Defendant's first contention seems to be that he did not assist, abet, solicit, or conspire to make a false insurance claim. At trial, the owner of the automobile that defendant was to repair and her daughter testified that defendant solicited and encouraged them to file a false police report and insurance claim. They testified that defendant told them what to say in the insurance claim and to the police; specifically, to inform the insurance company that the car windows were broken out and the interior was spray-painted. It is undisputed that there was no such damage to the car.

Defendant denied this version of events. He testified that he did not ask the women to file a false claim, but merely calculated an estimate, without looking at the car, based on the daughter's list of what needed repair. The trial court found the car owner's and her daughter's testimony credible because they did not stand to gain from the false claim, only defendant stood to gain financially. This Court defers to the trial court on judgment of witnesses' credibility as it has a superior opportunity to evaluate such matters. *People v Sexton (After Rem)*, 461 Mich 746, 752; 609 NW2d 822 (2000); MCR 2.613(C). We find that the testimony at trial, along with the photos of the car offered as exhibits, is sufficient evidence for a rational trier of fact to find that defendant assisted, abetted, solicited, or conspired to make a false insurance claim.

Defendant next argues that he did not have the requisite intent to injure, defraud, or deceive. Defendant contends that he planned to actually make the repairs to the automobile and that there would subsequently be no unjust enrichment. Again, this argument involves an issue of credibility, the determination of which is properly left for the trier of fact. *Sexton*, *supra* at 752. The car owner and her daughter testified that the only repair needed on the car involved the rear bumper. The daughter testified that she did not take the car in to have the repairs listed in the insurance claim. She only wanted the bumper repaired. A police officer testified that the car was not damaged as described in the insurance claim. Viewed in the light most favorable to the prosecution, this testimony is sufficient evidence for the trial court to conclude that defendant did not intend to make the repairs and that he intended to injure or defraud the insurance company.

Moreover, even if the trial court believed that defendant planned to make the unnecessary repairs, it still could find defendant guilty beyond a reasonable doubt. The car owner and her daughter each testified that defendant specifically told them what to say in the insurance claim and/or the police report. He told them to make false statements about the manner and extent of the damage to the car. This demonstrates an intent to deceive sufficient to satisfy MCL 500.4503.

Affirmed.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Kirsten Frank Kelly