

STATE OF MICHIGAN
COURT OF APPEALS

In re Bennie Tabb, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

BENNIE TABB,

Respondent-Appellant.

UNPUBLISHED

June 8, 2004

No. 245166

Wayne Circuit Court

Juvenile Division

LC No. 96-340844

Before: Markey, P.J., and Wilder and Meter, JJ.

PER CURIAM.

Respondent appeals as of right from his bench trial convictions for felonious assault, MCL 750.82, and receiving and concealing stolen property with a value of \$1,000.00 or more but less than \$20,000.00, MCL 750.535(3)(a). The two convictions arose from two separate incidents. We affirm in part, reverse in part, and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, respondent argues that there was insufficient evidence to support his convictions. In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in the light most favorable to the prosecutor and determine whether a rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). The standard of review is deferential; a reviewing court must draw all reasonable inferences and make credibility choices in support of the verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

There was sufficient evidence to support the assault conviction. Two witnesses testified that they saw respondent hit the victim in the back of the head with a shovel. The court acted within its fact-finding role in rejecting conflicting evidence and finding that respondent committed the crime.

Moreover, there was sufficient evidence to find that respondent aided in receiving and concealing stolen property. After various items were stolen from the complainant's house, respondent was found driving a vehicle in which some of the stolen property was found. The

court could reasonably find that even if respondent was not one of the people who took the items from the house, he aided in receiving or concealing some of the property afterwards.

The prosecutor failed to establish, however, that the property at issue was worth \$1,000 or more. Indeed, the only testimony offered at trial regarding the value of the property stolen was the complainant's testimony that his stolen laptop computer was worth \$5,000. However, this laptop was not recovered from the automobile that defendant was found to be driving. The property recovered consisted of a cellular telephone charger and a computer hard drive. The court explicitly based its finding of guilt on these two items. The prosecutor presented insufficient evidence to establish the value of these items. Accordingly, we must vacate defendant's conviction under MCL 750.535(3)(a) and remand for entry of conviction, as well as sentencing, under MCL 750.535(5) (receiving and concealing stolen property valued at less than \$200).

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter