

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

OSCAR VARGAS,

Defendant-Appellant.

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UNPUBLISHED

August 12, 2004

No. 247541

Wayne Circuit Court

LC No. 02-011055-01

Before: Whitbeck, C.J., and Owens and Schuette, JJ.

PER CURIAM.

I. Overview

Defendant Oscar Vargas was convicted in a bench trial of armed robbery<sup>1</sup> and malicious destruction of personal property between \$1,000 and \$20,000.<sup>2</sup> The trial court sentenced Vargas to concurrent terms of 51 to 120 months' imprisonment for the armed robbery conviction and two to five years' imprisonment for the malicious destruction of property conviction. Vargas appeals as of right, arguing that the evidence was insufficient to support his conviction. We affirm.

II. Basic Facts And Procedural History

This case arose from the August 15, 2002, robbery of Curtis Buzo while his vehicle was stopped at an intersection. According to Buzo's trial testimony, he heard a loud crack from the rear of his vehicle and turned around to find his rear window shattered. A bald Hispanic man appeared at Buzo's open driver's side window, asked Buzo if he had any money, and threatened to cut or kill him. The man held the knife to Buzo's throat and opened his door.

Buzo then became aware of a second assailant at the passenger door. The second assailant, who was also armed with a knife, asked Buzo if he had any money. Buzo answered

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<sup>1</sup> MCL 750.529.

<sup>2</sup> MCL 750.377a(1)(b)(i).

that he had just been paid and had no money. The first assailant ripped the front pocket off Buzo's shirt, which contained Buzo's cigarettes and paycheck.

Buzo testified that as he struggled with the first assailant, who was trying to pull him from the car, the second assailant took Buzo's wallet from the back pocket of his pants, opened it, and alerted the first assailant to the fact that Buzo had a badge and was a "f-ing cop." The first assailant then punched Buzo in the mouth, cutting his lip. Buzo had been a reserve police officer for the city of Taylor.

According to Buzo, he heard another window shatter and became aware of a third assailant. After hearing a nearby commotion, the assailants returned to their car, an older model Cougar that was parked behind Buzo's car. As the assailants left the scene, they collided with Buzo's open door, almost hitting him. After the attack, Buzo noticed that his cellular phone was missing from his car's console and that his tires had been slashed. Buzo called the police.

When Officer Andre Davis arrived on the scene, he noticed that the rear and back seat passenger windows of the Buzo's vehicle had been broken, and that Buzo's lip was injured in a manner that was consistent with being punched. After Officer Davis began taking Buzo's statement, he issued an alert for three Hispanic Americans driving an older model Cougar with license plate KQW 368. Officer Davis radioed that the individuals had assaulted Buzo with a knife and stolen his cell phone and paycheck.

Shortly after Officer Davis broadcasted his alert, Officer Arci Tosqui noticed a Mercury Cougar with the same license plate described in the bulletin. Officer Tosqui forced the vehicle into an alley and, along with three other police officers, restrained and arrested the occupants, who were identified as Vargas, Jose Ruvalcaba, and Luis Ortega. The officers searched the vehicle and found Buzo's paycheck and cell phone in the front seat, and a baseball bat and a metal knife in the back seat. On cross-examination, Officer Tosqui testified that defendant was thinner than codefendants Ruvalcaba and Ortega at the time of the arrest, although Buzo had told Officer Davis that "assailant one" was heavyset.

On cross-examination, Officer Davis described Buzo's initial statement in detail. Buzo told Officer Davis that, while stopped at the intersection, he was startled by the sound of his window being broken, then two Hispanic American men approached Buzo's vehicle with a gun. Buzo never specified which of his assailants was armed with the gun in his initial report; and, at trial, he did not testify that a gun was used in the attack. Rather, at the scene, Buzo told Officer Davis that the first assailant, a heavyset individual, was armed with a red and black folding knife and the second assailant was carrying a baseball bat. Officer Davis' partner found the folding knife near the driver's side door and took it into evidence. Officer Davis did not notice any rips or tears in Buzo's clothing, although he described Buzo as "grisly" because there was blood on his clothes. Buzo reported that the man with the baseball bat threw him to the ground and took his wallet. Buzo also reported that a third man remained near the rear of the car and helped break Buzo's windows.

At the scene, Buzo was unable to specify to Officer Davis the position and identities of the assailants. Consequently, Officer Davis was only able to identify the individuals as "assailant one," "assailant two" and "assailant three." Officer Davis testified that his report identified: (A) "assailant one" as the individual with the knife who took Buzo's paycheck;

(B) “assailant two” as the individual with the baseball bat who took Buzo’s wallet; and (C) “assailant three” as the individual who did not approach the vehicle with the others. At trial, Buzo identified “assailant one” as Vargas and “assailant two” as codefendant Ruvalcaba. Buzo was unable to identify assailant three as codefendant Ortega.

Buzo’s trial testimony differed in some respects from the account he initially gave police at the scene. For example, Buzo had initially stated that the second assailant was armed with a baseball bat, not a knife, and he did not specify how his paycheck was stolen. Also, in the initial report, Buzo said that the second assailant threw him down and took his wallet. Buzo also failed to mention that he had been punched, although Officer Davis noted that Buzo’s lip was cut when he arrived at the scene.

After the prosecution rested, Vargas did not present any witnesses to rebut the prosecution’s evidence but moved for a directed verdict. The trial court denied the motion on the ground that the evidence was sufficient to go to the factfinder because he found Buzo credible. Specifically, the court noted Buzo “was very emphatic in his testimony here in this courtroom as to the two person [sic] he identified as having direct contact with him.”

In a ruling from the bench, the trial court acknowledged that identification testimony must be “examined very closely” and that Buzo’s testimony contained inconsistencies. However, the trial court noted that a factfinder must also take evidence that supported the testimony into account. Ultimately, the trial court concluded that Vargas was the individual at the driver’s side of the vehicle who had a knife and struck Buzo. The trial court further found that Vargas had taken Buzo’s cigarettes and paycheck from Buzo’s shirt pocket. Finally, the trial court reasoned that Vargas was guilty regardless whether he knew the paycheck was there or if it was hidden behind the cigarettes. Consequently, the trial court found Vargas guilty of armed robbery and malicious destruction of property. The trial court found Vargas not guilty of felonious assault because the knife had been used in the commission of the armed robbery.

### III. Sufficiency Of The Evidence

#### A. Standard Of Review

Vargas asserts that there was insufficient evidence presented at trial to support his convictions of armed robbery and malicious destruction of property. We review *de novo* challenges to the sufficiency of the evidence, taking the evidence in the light most favorable to the prosecutor and determining whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.<sup>3</sup>

#### B. Armed Robbery And Malicious Destruction Of Property

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

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<sup>3</sup> *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

statute.<sup>4</sup> Malicious destruction of property is a specific intent crime, so there must be a showing of intent to commit the injury or property destruction as well as proof of actual damage.<sup>5</sup> Intent is a question of fact that the trier of fact may infer from the circumstances.<sup>6</sup> Minimal circumstantial evidence is sufficient to prove intent because of the difficulty of proving an actor's state of mind.<sup>7</sup> Circumstantial evidence and the reasonable inferences which arise from the evidence can constitute satisfactory proof of the elements of the crime.<sup>8</sup>

In this case, the testimony from Buzo and the two police officers, viewed in a light most favorable to the prosecution, provided sufficient evidence from which the trier of fact could have concluded beyond a reasonable doubt that Vargas robbed Buzo and damaged his car. Evidence indicated that Vargas was in possession of a knife throughout the attack and threatened Buzo prior to taking his paycheck. There was also evidence that Vargas was apprehended in the same car that was used in the attack and that Buzo's paycheck and cell phone were found in that car. Finally, there was evidence that Buzo's car was undamaged before the attack, but required repairs afterward.

It is true that Buzo's testimony conflicted with his initial report of the incident, particularly regarding which defendant was armed with which weapon. It is also true that Buzo initially described Vargas as heavyset, though other trial testimony indicated that Vargas was thinner than his two companions. However, this conflicting testimony created issues of fact and credibility for the trier of fact to resolve, and we defer to the trial court's determinations regarding these issues.<sup>9</sup> Viewing the evidence in the light most favorable to the prosecutor, we conclude that a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.<sup>10</sup>

Affirmed.

/s/ William C. Whitbeck

/s/ Donald S. Owens

/s/ Bill Schuette

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<sup>4</sup> *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (citation omitted).

<sup>5</sup> *People v Culp*, 108 Mich App 452, 455; 310 NW2d 421 (1981).

<sup>6</sup> *People v Kieronski*, 214 Mich App 222, 232; 542 NW2d 339 (1995).

<sup>7</sup> *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

<sup>8</sup> *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

<sup>9</sup> *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004).

<sup>10</sup> *Johnson, supra* at 723; 597 NW2d 73 (1999); *Herndon, supra* at 415.