

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of PATRICK KEILON-JAM
MCGEE, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

PATRICK KEILON-JAM MCGEE,

Respondent-Appellant.

UNPUBLISHED

October 30, 2007

No. 272256

Wayne Circuit Court

Family Division

LC No. 05-449258-NA

Before: Zahra, P.J., and White and O’Connell, JJ.

PER CURIAM.

Respondent, a juvenile, appeals as of right from an order of disposition entered after he was adjudicated guilty of armed robbery, MCL 750.529, and assault and battery, MCL 750.81. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent’s sole claim on appeal is that the evidence was insufficient to sustain the verdict. We disagree. We review de novo a challenge to the sufficiency of the evidence in a bench trial. *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). “The essential elements of an armed robbery are (1) an assault, and (2) a felonious taking of property from the victim’s person or presence, while (3) the defendant is armed with a weapon described in the statute.” *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). “An assault may be established by showing either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery.” *People v Starks*, 473 Mich 227, 234; 701 NW2d 136 (2005). “Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense.” MCL 767.39.

The 15-year-old complainant, Leroy Kelly, testified that he and a younger friend, Quion Jones, were riding their bicycles when they saw respondent, Torris Johnson, and four other boys. Leroy believed that the boys “were going to assault” him because the group had argued with Leroy’s mother earlier in the day and had talked about hurting him then. When he saw the boys, Leroy heard respondent say “we gone get him” more than once. Leroy speeded up on his bicycle, but the chain slipped, causing him to stop. Quion rode away, trying to get back to his

house. Respondent and Torris ran up to Leroy. Torris pulled out a gun and told Leroy to get off his bicycle. Respondent kept saying, "Get him," and Torris said, "I'm going to shoot him." Leroy froze at first and then ran. Respondent chased Leroy, caught up with him, and punched him more than once in the face. Three of the other boys also chased Leroy. Torris and possibly one other boy ran the other way with the bicycle. The police returned the bicycle to Leroy later that day. During cross-examination, respondent's attorney asked Leroy why, in his statement to the police, he had not mentioned that respondent had said something at the scene. Leroy answered, "They did not ask."

Detroit Police Officer Paul Pesmark testified that Leroy and Quion flagged him down and said that they had been robbed. The officers canvassed the area and found respondent and Torris Johnson. Respondent and Torris directed the officers to an alley where the bicycle was found. Because the bicycle matched the description given by Leroy, the police turned the bicycle over to him. The officers looked around the area but did not see any sign of a gun.

Torris Johnson testified that before the charged incident took place, Leroy had chased him with a stick, accusing him of stealing the bicycle, and Leroy's mother had pulled a knife on Torris. According to Torris, when he and respondent saw Leroy on the evening in question, Leroy was standing in front of his aunt's house and his bicycle was not in the vicinity. Torris testified that no words were exchanged, and he did not see anything happen with regard to Leroy and the bicycle that evening. He testified that he saw Leroy on the bicycle later that evening, but Leroy jumped off the bicycle and left it. According to Torris, several boys picked up the bicycle and ran away with it. Torris testified that he saw Leroy flag down the police car, and he and respondent were walking toward respondent's house when the police pulled up and stopped them. Torris denied having a gun or telling Leroy to give up his bicycle. He also denied trying to pick up the bicycle after Leroy had left it on the street.

Respondent did not testify. The trial court concluded that Leroy was a more credible witness than Torris, and found that Torris had committed the armed robbery. The trial court also found that respondent had acted in concert with Torris, justifying respondent's adjudication of armed robbery.

"[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 Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). We defer to the trial court's superior opportunity to weigh the evidence, determine witness credibility, and resolve factual disputes. MCR 2.613(C); *People v Cartwright*, 454 Mich. 550, 555; 563 NW2d 208 (1997). Applying these standards, Leroy's testimony clearly established that Torris committed an armed robbery. Torris pointed a gun at Leroy and threatened to shoot him, thus placing Leroy in reasonable apprehension of receiving an immediate battery, and then ordered Leroy to get off his bicycle, thus depriving Leroy of his property. Leroy testified that while the gun was pointed at him, respondent stood by Torris and said "get him" several times. Further, when Leroy tried to escape, respondent ran after him and punched him in the face. This evidence was sufficient to establish that respondent counseled or aided Torris in the commission of the armed robbery. Regarding respondent's assault and battery adjudication, battery is "an intentional, unconsented and harmful or offensive touching of the person of another, or of something closely connected with the person." *People v Reeves*, 458

Mich 236, 240 n 4; 580 NW2d 433 (1998). Leroy's testimony established that respondent intentionally and repeatedly punched Leroy in the face as he tried to escape. This testimony alone satisfied the elements of for assault and battery. Therefore, the trial court's adjudication of guilt was supported by sufficient evidence.

Affirmed.

/s/ Brian K. Zahra

/s/ Helene N. White

/s/ Peter D. O'Connell