

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CRAIG PATRICK MCCART,

Defendant-Appellant.

UNPUBLISHED

January 8, 2009

No. 282085

Oakland Circuit Court

LC No. 2007-216046-FH

Before: Zahra, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of second-degree home invasion, MCL 750.110(a)(3), and two counts of receiving or concealing stolen property valued at \$1,000 or more but less than \$20,000, MCL 750.535(3)(a). He was sentenced as a habitual offender, third offense, MCL 769.13, to concurrent prison terms of 7 to 30 years for each conviction. He appeals as of right. We affirm.

Defendant's convictions arise from break-ins at two homes, which were approximately 1-1/4 to 1-1/2 miles apart, in Bloomfield Township. (Tr, p 252.) The break-in at a home on Byewood Road occurred between 7:30 and 10:45 p.m. on July 14, 2007. (Tr, pp 101-102.) The sliding glass door was broken and several thousand dollars worth of jewelry and coins and a bag were missing. (Tr, pp 102-103.) The break-in at the other home, on Cathedral Drive, occurred between the morning of July 13, 2007, and defendant's arrest at approximately 12:30 a.m. on July 15, 2007. (Tr, p 119.)

Officer Joseph Monti investigated the break-in on Byewood, left the crime scene, and parked in a nearby parking lot to write his report. (Tr, pp 150-153.) While he was typing his report at approximately 12:30 a.m., he observed defendant, who was carrying a canvas bag, walk in front of his car on the other side of a fence. (Tr, pp 154-156, 166-167.) Officer Monti engaged defendant in conversation and asked for identification. (Tr, pp 156-158.) When he ran the information in the Law Enforcement Information Network, he discovered that there was an outstanding warrant and arrested defendant. (Tr, p 158.) Officer Monti later noticed that defendant's left wrist was bleeding (Tr, p 162.)

The bag in defendant's possession was from the Byewood home, and it contained numerous pieces of jewelry, including items that had been reported as missing from the Byewood home. (Tr, pp 108-112, 159.) Other items bore the Cathedral address and the

homeowner's name (Tr, p 162), which led the police to check that residence where they discovered that the home had been ransacked. (Tr, p 177.) Numerous pieces of jewelry, credit cards, Canadian money, and other items from the Cathedral address were discovered in the bag that defendant was carrying. (Tr, pp 128-140.) The encounter between Officer Monti and defendant occurred approximately a quarter mile from the Cathedral address. (Tr, p 252.)

A very small fragment of glass was collected from inside defendant's shoe (Tr, pp 187-193, 195-197, 200). The fragment had the same characteristics (green-grayish tint on one side with orange glow fluorescence under regular light, "diced" texture, tempered, refractive index) as the glass from one of the double panes of glass at the Byewood home. (Tr, pp 202-205; 227-236.)

Defendant told the police that he found the bag on the side of the road after leaving his girlfriend's home, but was unwilling to provide information to contact her or the friend that he claimed drove him to meet her. (Tr, pp 171, 173, 250-255.)

On appeal, defendant argues that the evidence was insufficient to establish that he was the perpetrator of the two home invasions. He contends that the fact that some of the stolen jewelry and \$1,500 was not recovered supports his claim that he found the bag by the side of the road, and theorizes that the fragment of glass may have fallen into his shoe when he picked up the bag.

When reviewing a challenge to the sufficiency of the evidence, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). The prosecution must prove the identity of the defendant as the perpetrator of a charged offense beyond a reasonable doubt. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976); *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967). Circumstantial evidence and reasonable inferences arising from it may be sufficient to support a conviction of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), reh den 461 Mich 1205 (1999).

In this case, defendant possessed items that were stolen from each home, and was in the vicinity of the homes within hours after the break-in at the Byewood address. He was also linked to the Byewood crime scene by the glass fragment. Although not all of the items that were taken from the homes were recovered from the bag defendant was carrying, the evidence was sufficient to establish beyond a reasonable doubt that defendant was the perpetrator.

Defendant also argues that he was denied the effective assistance of counsel because defense counsel did not challenge the legality of Officer Monti's stop of defendant on the basis that it was not supported by reasonable suspicion.

To establish ineffective assistance of counsel, a defendant must show that his counsel's representation "fell below an objective standard of reasonableness" and "overcome the strong presumption that his counsel's action constituted sound trial strategy under the circumstances." *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). Defendant must also demonstrate that counsel's deficient performance "was so prejudicial to him that he was denied a fair trial." *Id.* In the absence of an evidentiary hearing pursuant to *People v Ginther*, 390 Mich 436; 212

NW2d 922 (1973), this Court's review is limited to errors apparent on the record. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997).

Officer Monti's undisputed testimony is that he engaged defendant in conversation and at some point asked for identification. There is no indication that Officer Monti physically hindered defendant from leaving the area until after the LEIN check revealed an outstanding warrant, at which point defendant was lawfully arrested. Contrary to defendant's argument, the Fourth Amendment was not implicated by Officer Monti's request for identification or the LEIN check. *People v Jenkins*, 472 Mich 26, 33-34; 691 NW2d 759 (2005) (an officer may seek a person's voluntary cooperation through noncoercive questioning and may ask for identification without violating the Fourth Amendment). Because there was no Fourth Amendment violation, defense counsel was not ineffective for failing to challenge the validity of the stop.

Affirmed.

/s/ Brian K. Zahra
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood