STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 15, 2012
v	No. 302362 Allegan Circuit Court
YOUSEF G. HADDAD, Defendant-Appellant.	LC No. 10-016679-FH

Before: MURPHY, C.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

Defendant appeals as of right his conviction, following a jury trial, of employing false pretenses to obtain money in the amount of $200 or more but less than $1,000, MCL 750.218(3)(a). The jury acquitted defendant of unlawfully driving away an automobile (UDAA), MCL 750.413. The trial court sentenced defendant to 60 days in jail, with credit for 6 days served. We affirm.

Defendant's conviction arose out of an incident in which defendant used his tow truck to pull a young woman's vehicle out of a snow-covered, highway median in the middle of the night after police had responded to the slide-off incident and then left the scene. Defendant placed her vehicle on the flatbed of his tow truck, drove the truck, with the woman as a passenger, to a gas station where she used her debit card at an ATM in an effort to withdraw cash to cover the payment for towing services, proceeded to drive the tow truck and the woman to the woman's parents' home after the ATM withdrawal was insufficient to cover the towing costs, and then obtained payment of $636 from the parents. The woman's car, after being unstuck from the deep snow in the median, could apparently still be driven despite the accident, but defendant nonetheless placed it on the tow truck's flatbed and then refused to release the vehicle until he was fully paid for his towing services. During the incident, there were cell phone communications between the young woman and her mother and between the mother and defendant. The false pretenses alleged by the prosecutor were that defendant misrepresented that he was only going to pull the disabled car out of the median and no more and that he would accept payment by debit card after the woman had expressed that she had no cash. There is no dispute that the woman and defendant had not discussed price or cost at the point when it was agreed that defendant would pull the car out of the median.

Defendant argues that the evidence was insufficient to support the conviction. We review claims of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. *Id.* at 514-515. Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The crime of obtaining money by false pretenses involving $200 or more but less than $1,000 requires the prosecution to prove: (1) the defendant made a false representation or used a false pretense, (2) the defendant knew that the representation or pretense was false when it was made, (3) the defendant made the false representation or used the false pretense with the intent to deceive or defraud someone when made or used, (4) the victim relied on the false representation or pretense, (5) the victim, as a result of the reliance, suffered the loss of money, and (6) the amount lost was $200 or more but less than $1,000. *In re People v Jory*, 443 Mich 403, 412; 505 NW2d 228 (1993); *People v Dewald*, 267 Mich App 365, 371; 705 NW2d 167 (2005); *Lueth*, 253 Mich App at 680-681; *People v Reigle*, 223 Mich App 34, 37-38; 566 NW2d 21 (1997); CJI2d 23.11. Charging an inflated price, in and of itself, does not constitute false pretenses. *People v Wilde*, 42 Mich App 514, 517; 202 NW2d 542 (1972); *People v Marks*, 12 Mich App 690, 692; 163 NW2d 506 (1968) ("gross overcharge does not constitute fraudulent misrepresentation" for purposes of MCL 750.218).[1] MCL 750.218(11) provides:

> As used in this section, "false pretense" includes, but is not limited to, a false or fraudulent representation, writing, communication, statement, or message, communicated by any means to another person, that the maker of the representation, writing, communication, statement, or message knows is false or fraudulent. The false pretense may be a representation regarding a past or existing fact or circumstance *or a representation regarding the intention to perform a future event or to have a future event performed*. [Emphasis added.][2]

[1] Contrary to defendant's argument, the prosecutor's case was not based on overcharging the woman and her family for defendant's towing services. Moreover, also contrary to defendant's argument, the false representations alleged by the prosecutor did not concern statements of opinion.

[2] At the time of trial, this language was found in subsection (9) of the statute. 2004 PA 154; 2011 PA 201. The cases cited above with respect to the elements of the offense indicate that a false pretense cannot be based on a misrepresentation of future events and has to be predicated on existing facts and circumstances. *Jory*, 443 Mich at 412; *Dewald*, 267 Mich App at 371 n 1;

"[A] false pretense can be the failure to speak when it is necessary to do so," and "silence may form the basis for a false pretense prosecution." *Jory*, 443 Mich at 413, 415.

Here, the evidence presented by the prosecutor was constitutionally sufficient to establish that defendant made a false representation or used a false pretense. The young woman testified that defendant "told me that he would pull me out." She further testified that defendant, a Chicago wrecker operator, walked around her car to inspect it for any damage. The woman then stated as follows, "I let him know that I had no cash on me, all I had was my debit card." Defendant replied, according to the woman, by saying that "it was okay." A responding police officer testified that defendant had informed him that "he could pull her out." The woman and the responding officer testified that the officer asked her if it was okay for defendant to pull her car out of the median, and she answered in the affirmative. The police officer then left the scene with the understanding that, given that it was driveable, the vehicle "was just going to be pulled out" of the ditch. When asked what happened next, the young woman explained:

> He then – the officer then left and with initial thinking that he was only pulling me out. And then I got in the tow truck to – because I was only in a long-sleeved shirt and vest and it was cold. [Defendant] told me to get into the truck and so I sat in the truck.
>
> * * *
>
> [Defendant's] partner and him pulled my car out and then put it on the back of the wrecker and strapped it down.
>
> * * *
>
> I was a little confused, because I only thought they were pulling it out and I was going to go on my way.
>
> * * *
>
> My mom was going to call a hotel and have me put up for the night so that I could drive home the next morning.

The woman testified that she had intended to drive her car to a hotel after being pulled out of the median,[3] that she did not give defendant permission to put her car on the flatbed, that she never wanted defendant to place the car on the tow truck's flatbed, and that she only gave

Lueth, 253 Mich App at 680; *Reigle*, 223 Mich App at 38; see also *People v Cage*, 410 Mich 401, 404; 301 NW2d 819 (1981). However, these cases dealt with facts and events that predated 2004 PA 154, which added the language that a false pretense can include a representation concerning the intention to perform a future event.

[3] Her mother also testified that the "plan" was for the woman to stay at a nearby hotel for the night, which her mother would pay by credit card over the phone.

him permission to pull her car out of the median. The woman acknowledged that when defendant and his partner were in the process of loading her car on the flatbed, which she observed, she did not say anything to them, as she was confused. She did not tell them to stop. Defendant proceeded to drive the tow truck to a nearby gas station that had an ATM. However, the woman only had $100 to $115 in the debit-card account and defendant demanded $295 for his services.[4] The woman had been under the impression that defendant "was going to write my card number down and process it when he got back to his shop or whatever." Defendant demanded full payment in cash and, because she did not have sufficient funds, there was an agreement that he would drive her to her parents' home, which was quite a distance away, and that the woman's parents would pay the bill, which would also include additional charges based on mileage.[5] When they arrived at her parents' home, the parents paid defendant $636 and he released the vehicle.

Defendant testified that after he came upon the young woman stuck in the median, he talked to her mother before police arrived, and she asked him "to tow the vehicle to the hotel." Defendant indicated that the young woman also told him that she wanted to be brought to a nearby hotel. Defendant testified that he subsequently winched the vehicle out of the ditch, strapped the car on the flatbed, drove his tow truck, with the woman riding along, to a nearby gas station that was across the street from a hotel, and then presented the woman with his bill. According to defendant, the woman then went to the gas station's ATM, but could not withdraw sufficient money to cover his towing bill. Defendant explained that he always required cash payments for his towing services and that he told the young woman that they could stop at an ATM where she could withdraw cash to pay for his services. On rebuttal, the woman's mother testified that she never spoke with defendant at the time that her daughter was stuck in the median and before she was pulled out. She further testified that she never asked defendant to drive her daughter to a hotel and that the first time they spoke was when defendant and her daughter were at the gas station.

Viewing the evidence in a light most favorable to the prosecution, resolving all evidentiary conflicts in the prosecution's favor, and deferring to the jury's assessments regarding weight and credibility, we find that the evidence was sufficient to support the verdict. With respect to the representation regarding the removal of the car from the median followed by the securing of the car on the flatbed, the evidence indicated that defendant represented to the responding officer and the young woman that he would pull the car out of the median. While defendant pulled the car out of the median, he proceeded, absent permission or authority, to take complete control over the vehicle by strapping it on the wrecker's flatbed despite the fact that the car was driveable. Defendant told the young woman that he would pull the vehicle out of the median, but he never said anything about placing the car on his tow truck and effectively making

[4] According to the young woman, this was the first time that an actual dollar amount was discussed.

[5] This agreement was made between defendant and the woman's mother via cell phone. According to the woman's mother, defendant refused the mother's offer to pay by credit card over the phone; defendant demanded cash only.

it unavailable to the woman. A reasonable interpretation of defendant's representation, giving rise to a false pretense, was that no more would be done with the car other than to remove it from the ditch. The false pretense could also be viewed as a combination of the representation and silence on defendant's part, where he gave no indication of an intent to put the car on the flatbed. We note that the jury, given its verdict, necessarily rejected defendant's testimony that the woman and her mother requested him to take the car and the woman to a hotel, thereby making a credibility assessment against defendant. Accepting this determination by the jury as we must, there was no basis for defendant to essentially confiscate the vehicle after it was removed from the median. Although the young woman remained silent when her car was being loaded on the flatbed, she testified that she was confused, and clearly the entire situation was a bit overwhelming under the circumstances. It was for the jury to determine the weight to be given to her failure to speak up.

With respect to the representation that the woman's debit card would suffice and that it was okay that the woman did not have any cash on her person when she agreed to use defendant's services, the woman was left with the *reasonable* impression that defendant would simply record the debit-card number for purposes of payment and not that defendant would drive her to an ATM to make a cash withdrawal under threat of not releasing the car. Whether by false representation, or by false representation in conjunction with silence, there was sufficient evidence to support the verdict.

In sum, there was sufficient evidence establishing that defendant made false representations or used false pretenses, that defendant knew that the representations or pretenses were false when made, that defendant made the false representations or used the false pretenses with the intent to deceive or defraud when made or used, that there was reliance on the false representations or pretenses, that, as a result of the reliance, there was a loss of money, and that the amount lost was $200 or more but less than $1,000.[6]

Affirmed.

/s/ William B. Murphy
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray

[6] We note that, had defendant done no more than pull the woman's car out of the median, there would have been a cost associated with the services, but clearly that expense would not have exceeded the $295 demanded by defendant later at the gas station. Given that the final bill was $636, there would still be a loss amounting to at least $340 ($636 - $295) predicated on the false pretenses, thereby satisfying the statutory dollar requirement with respect to MCL 750.218(3)(a).