

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRELL DONNIE NICKENS,

Defendant-Appellant.

UNPUBLISHED

June 21, 2012

No. 304264

Cass Circuit Court

LC No. 10-010246-FC

Before: DONOFRIO, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Defendant appeals following his convictions by jury of armed robbery, MCL 750.529; conspiracy to commit larceny from a person, MCL 750.157a, MCL 750.357; and assault with intent to do great bodily harm less than murder, MCL 750.84. The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, to concurrent sentences of 12 to 40 years' imprisonment for the armed robbery, 5 to 10 years' imprisonment for the conspiracy to commit larceny from a person, and 10 to 40 years' imprisonment for the assault with intent to do great bodily harm less than murder. We affirm.

Defendant's convictions arose from an assault in which defendant struck the victim in the head with a brick and continued to hit the victim while his two coconspirators searched through the victim's pockets and took the victim's wallet. Defendant's sole issue on appeal is that there was insufficient evidence to support his conviction for conspiracy to commit larceny from a person. We disagree.

We review claims of insufficient evidence de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). In reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution to determine whether the evidence was sufficient to allow any rational trier of fact to find guilt beyond a reasonable doubt. *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002). We "must make all reasonable inferences and resolve all credibility conflicts in favor of the jury verdict." *People v Solmonson*, 261 Mich App 657, 661; 683 NW2d 761 (2004) (citations omitted). "A criminal conspiracy is a partnership in criminal purposes, under which two or more individuals voluntarily agree to effectuate the commission of a criminal offense." *People v Jackson*, 292 Mich App 583, 588; 808 NW2d 541 (2011), citing *People v Justice (After Remand)*, 454 Mich 334, 345; 562 NW2d 652 (1997). "Conspiracy is a specific-intent crime, because it requires both the intent to combine with others

and the intent to accomplish the illegal objective.” *People v Mass*, 464 Mich 615, 629; 628 NW2d 540 (2001) (citation omitted). The illegal objective in this case was larceny from a person. Conviction of larceny from a person requires the following elements: “(1) the taking of someone else’s property without consent, (2) movement of the property, (3) with the intent to steal or permanently deprive the owner of the property, and (4) the property was taken from the person or from the person’s immediate area of control or immediate presence.” *People v Perkins*, 262 Mich App 267, 271-272; 686 NW2d 237 (2004).

“[D]irect proof of agreement is not required [to sustain a conspiracy conviction], nor is proof of a formal agreement necessary.” *People v Cotton*, 191 Mich App 377, 393; 478 NW2d 681 (1991). “[P]roof may be derived from the circumstances, acts, and conduct of the parties.” *Justice*, 454 Mich at 346. “However, the facts and circumstances must warrant at least a fair inference of the elements to be established in order to make a case of conspiracy.” *People v Taurianen*, 102 Mich App 17, 31; 300 NW2d 720 (1980).

Viewed in a light most favorable to the prosecution, there was ample evidence that defendant and his coconspirators worked together to commit a larceny. Before defendant’s attack on the victim, he was seen whispering separately to his coconspirators. Defendant subsequently yelled “Let’s get um [sic]” immediately before the victim was attacked. Defendant then hit the victim in the head with a brick, causing the victim to fall to the ground. Defendant continued to hit the victim while his coconspirators searched the victim’s pockets and took the victim’s wallet. All three men then ran from the scene. This evidence of a concert of action gives rise to fair inferences that defendant and his coconspirators conspired and intended to accomplish an illegal objective, i.e., to take the victim’s property from his person and carry it away with the intent to permanently deprive the victim of the property. *Cotton*, 191 Mich App at 393-394. See also *Hunter*, 466 Mich at 9 (“[w]hat the conspirators actually did in furtherance of the conspiracy is evidence of what they had agreed to do.”). The evidence that defendant and his coconspirators worked together to commit the larceny provides sufficient evidence of the conspiracy.

Defendant nevertheless contends that there was insufficient evidence of a conversation between defendant and his coconspirators to establish beyond a reasonable doubt that there was an agreement to commit the larceny. We disagree. Direct evidence of a conversation between defendant and his coconspirators is not required to show the existence of the agreement. *Cotton*, 191 Mich App at 393. See also *People v Hintz*, 69 Mich App 207, 219-220; 244 NW2d 414 (1976). Moreover, a witness testified that defendant engaged in whispered conversations with his coconspirators before the assault and that defendant yelled “Let’s get um [sic]” immediately before the attack. Although defendant contends that this testimony was unreliable and was contradicted by other witness testimony, “[i]t is the province of the jury to determine questions of fact and assess the credibility of witnesses.” *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998). This Court will not disturb such determinations on appeal. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

To the extent that defendant argues that defendant and his coconspirators did not have an opportunity to conspire because they were in the victim’s presence, such a contention is belied by the testimony that defendant and his coconspirators engaged in whispered conversations while the group was walking together. Further, there was evidence that before the assault, the victim

went to the door of a home looking for a friend and that while the victim was at the door, defendant and his coconspirators remained near the street. Based on this evidence, a rational inference could be drawn that defendant and his coconspirators had an opportunity to discuss any planned crime at that time, particularly in light of the fact that the assault took place only a short time later.

When viewed in the light most favorable to the prosecution, the evidence was sufficient to allow a rational jury to find defendant guilty beyond a reasonable doubt of conspiracy to commit larceny from a person.

Affirmed.

/s/ Pat M. Donofrio
/s/ Jane E. Markey
/s/ Donald S. Owens