STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 27, 2012
v	No. 304875 Saginaw Circuit Court
JAMES EARLY HARRIS, JR., Defendant-Appellant.	LC No. 10-034923-FH

Before: O'CONNELL, P.J., and JANSEN and RIORDAN, JJ.

PER CURIAM.

Defendant, James Early Harris, Jr., appeals by right his convictions and subsequent sentences for extortion, MCL 750.213, carrying a dangerous weapon with unlawful intent, MCL 750.226, resisting and obstructing a police officer, MCL 750.81d, and three corresponding counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. We affirm.

I. FACTUAL BACKGROUND

This case concerns events that took place on Cherry Street, in Saginaw, on September 11, 2010. That afternoon, Willie Lee Neal was at defendant's residence, 2030 Cherry, to fix the transmission on defendant's truck. Defendant had agreed to pay Neal $400; $210 had been paid in advance, the balance to be tendered upon completion. Around 5:00 p.m., Neal was working on the truck in the shared driveway between defendant's home and 2034 Cherry. Defendant's neighbor, Robbin Smith, a resident of 2034 Cherry, arrived home from work and greeted her mother and her aunt, both of whom were seated on the front porch.

Rain started to fall, so Smith's mother invited Neal to sit on her covered porch. When Smith returned to the porch, she found defendant standing on the porch talking to Neal. Smith stated that defendant was using profanity toward Neal regarding unsatisfactory work on the truck. Neal stated that he would work on the truck when it stopped raining. Smith was offended by defendant's language and asked him to leave her porch; defendant left the porch but remained on the sidewalk in front of Smith's house, conversing with Neal. Smith testified that Neal "was calm throughout the whole situation."

Smith stated that defendant then briefly entered his home and returned outside carrying a black handgun. Defendant admitted that he "always" carries a handgun on his property due to

family members having been previously gunned down in the area. Defendant continued to speak to Neal, but Smith stated that defendant did not return to her porch, nor "actually point[] [the gun] at anybody." Smith then related the following exchange between Neal and defendant:

> *Q.* What did you hear [defendant] saying?
>
> *A.* He told Mr. Neal that if he didn't continue to work on his truck and fix it, he would silence him if he didn't give him, I want to say it was a hundred dollars, a hundred dollars back, and Mr. Neal told him if that's what he wanted to do, go ahead and do it because he didn't fear him or a gun because he served the higher power; if he was to kill him, God would handle this situation, and, his exact words, and then you wouldn't – you wouldn't see this yellow house anymore because you would spend the rest of your life in prison.
>
> *Q.* So Mr. Neal took that as a threat to him --
>
> *A.* Yes.
>
> ***
>
> *Q.* Did you also take it as a threat?
>
> *A.* Yes.
>
> *Q.* The fact that the defendant told Mr. Neal he would silence him?
>
> *A.* Yes.
>
> *Q.* If he didn't either fix the truck or pay him a hundred dollars back?
>
> *A.* Exactly.
>
> *Q.* Did Mr. Neal get up and go start working on the truck?
>
> *A.* No.
>
> *Q.* Did Mr. Neal pay [defendant] the hundred dollars at that point?
>
> *A.* No.
>
> *Q.* What did Mr. Neal continue to do?
>
> *A.* Sat there and ate his sandwich.

Smith told those on the porch that she intended to call 911. At 5:04 p.m., a 911 call was received from a land line at 2034 Cherry. At this time, Smith testified that defendant left her property, placed the handgun on the top step of his porch, and continued talking to Neal – "[h]e wasn't yelling. He was talking normal." Smith stated that defendant entered his home through

the front door. Shortly thereafter, defendant was seen standing in the shared driveway holding a rifle.

Defendant walked halfway up the shared driveway toward the street carrying the rifle upright. Saginaw Police Officer Diane Meehalder stated that defendant was "creeping" alongside Smith's house. Other witnesses testified that defendant was merely standing or walking in the driveway carrying the rifle upright. Defendant testified that he merely removed the rifle from his truck to place it in his home for the evening.

At this point, Officer Meehalder arrived in her police cruiser, without sirens or lights, and exited the car. Meehalder testified that she saw defendant in the driveway carrying the rifle and said "James, get down on the ground." Defendant, carrying the rifle, ran into his backyard and out of the sight of Meehalder and the other witnesses.

Defendant denied hearing any command from an officer while he stood in the driveway. He admitted that he walked into the backyard because he does not trust police officers, a distrust that stems from their alleged lack of response to a previous 911 call he had made regarding shots being fired at his home.

Officer Meehalder entered defendant's backyard, kicked open the back door, and was quickly joined by at least three fellow officers. They yelled for defendant to come out of the house. Defendant's wife and her uncle exited from the main floor. Defendant emerged from the basement stairwell, unarmed and cooperative, only "one to two" minutes after the officers' commands. Defendant was arrested, handcuffed, and placed in the back seat of a police cruiser parked on the street.

Three police officers then entered defendant's basement ostensibly to "secure" the residence. Meehalder did not accompany these officers. The officers retrieved two long guns, i.e., rifles, and a black handgun. Meehalder stated that she interviewed Neal, but no record of the interview exists outside of her testimony at trial.

Defendant was originally charged with six felonies: assault with a dangerous weapon (felonious assault), MCL 750.82; carrying a dangerous weapon with unlawful intent, MCL 750.226; assaulting, resisting or obstructing a police officer, MCL 750.81d(1); and three corresponding counts of felony-firearm, MCL 750.227b. After a preliminary examination, the felonious assault charge was amended to extortion, MCL 750.213, at the request of the prosecution. Defendant was bound over to circuit court on all counts.

A three-day jury trial was held between April 26, 2010 and April 28, 2010. The jury returned guilty verdicts on all counts. Defendant appealed to this Court by right.

II. EXTORTION

A. Standard of Review

"We review de novo a challenge on appeal to the sufficiency of the evidence." *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). "In determining whether the prosecutor has presented sufficient evidence to sustain a conviction, an appellate court is

required to take the evidence in the light most favorable to the prosecutor" to ascertain "whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt." *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010) (internal quotations and citations omitted).

B. Analysis

"Due process requires that, to sustain a conviction, the evidence must show guilt beyond a reasonable doubt." *People v Harveson*, 291 Mich App 171, 175; 804 NW2d 757 (2010). We do not "consider whether any evidence existed that could support a conviction, but rather, [] must determine whether a rational trier of fact could find that the evidence proved the essential elements of the crime beyond a reasonable doubt." *Id*. Evidence must be reviewed in the light most favorable to the prosecution. *Id*. We will not interfere with the jury's role of weighing evidence and determining the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, amended on other grounds 441 Mich 1201 (1992). "Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime." *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). "All conflicts in the evidence must be resolved in favor of the prosecution." *Id*.

According to MCL 750.213, extortion occurs when:

> [a]ny person who shall, either orally or by a written or printed communication, maliciously threaten to accuse another of any crime or offense, or shall orally or by any written or printed communication maliciously threaten any injury to the person or property or mother, father, husband, wife or child of another with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do or refrain from doing any act against his will . . . .

In *People v Fobb*, 145 Mich App 786, 790; 378 NW2d 600 (1985) (emphasis in original), this Court defined the elements of extortion as:

> 1. An oral or written communication maliciously encompassing a threat.
> 2. The threat must be to:
>   a. Accuse the person threatened of a crime or offense, the truth of such accusation being immaterial; *or*
>   b. Injure the person or property of the person threatened; *or*
>   c. Injure the mother, father, husband, wife, or child of the person threatened.
> 3. The threat must be:
>   a. With intent to extort money or to obtain a pecuniary advantage to the threatener; *or*
>   b. To compel the person threatened to do, or refrain from doing, an act against his or her will.

In the instant case, there was sufficient evidence to support defendant's extortion conviction. In regard to the first two elements, defendant informed Neal that he was going to "silence" him if Neal did not listen to defendant's demands and defendant was holding a gun.

Thus, a reasonable jury could have found beyond a reasonable doubt that defendant verbally threatened to injure Neal unless he paid defendant $100 or, in the alternative, Neal fixed defendant's truck.

Defendant contends that there was insufficient evidence of his intent to compel Neal to perform an act against Neal's will. Defendant challenges that the act of repairing the truck was not against Neal's will because Neal had previously agreed to perform this work. This argument is meritless. While Neal may have initially agreed to work on the truck, the evidence establishes that he did not want to work on the truck when defendant ordered him to do so. Not only did Neal communicate his refusal to continue working, he felt so strongly about his decision that he referenced his willingness to face God rather than capitulate to defendant's demands even at the threat of being "silenced" at gunpoint. Hence, there was sufficient evidence that the act defendant ordered Neal to perform was against Neal's will.

Defendant also challenges that working on the truck was not of significant value to Neal and, thus, it was insufficient to support an extortion conviction. Defendant primarily relies on this Court's opinion in *Fobb*, *supra*, to support his contention that the act demanded of the victim has to have value. In *Fobb*, the defendant was angry with the victim for spreading lies about him. *Fobb*, 145 Mich App at 788. Thus, the defendant broke into the victim's office, beat the victim, and forced her to sign a note saying that she had spread lies about him. *Id.* at 789. This Court reversed defendant's extortion conviction, stating that "[t]he note the victim was forced to write was erratic, quixotic and was not used to the victim's detriment or defendant's advantage." *Id.* at 791, 793. This Court held that "the Legislature did not intend punishment for every minor threat[]" in the extortion statute and that the act must be "serious," citing examples such as dissuading a victim from reporting criminal sexual conduct, requiring a victim to execute a deed, or dissuading a victim from testifying truthfully. *Id.* at 791, 792-793; see also *People v Hubbard*, 217 Mich App 459, 485-486; 552 NW2d 493 (1996), overruled on other grounds *People v Bryant*, __Mich __; __NW2d__ (Docket No. 141741, issued June 28, 2012) (slip op at 40-41).

While *Fobb* is conclusive, we note that nothing in the statutory language of MCL 750.213 requires the action to be serious in nature or have significant value. In fact, these concepts are inherently subjective, as what is serious or valuable to one person may be of little consequence to another.

Further, even under a *Fobb* analysis of seriousness or value, defendant's claim fails. The actions defendant ordered in this case were serious and the things he requested from Neal were valuable. While holding a gun, defendant demanded that Neal work on the truck or give defendant a $100. Regardless of whether defendant felt he was justified in his demands, the fact remains that defendant's forcing of Neal to perform work or give defendant $100 was a serious "detriment" to Neal. Thus, we conclude that a reasonable jury could have found beyond a reasonable doubt that all the elements of extortion were proven beyond a reasonable doubt.

III. MOTION TO SUPPRESS

Defendant next argues that the trial court erred in denying defendant's motion to suppress the two rifles seized by the police from defendant's basement. We need not determine whether the trial court erred on this issue, because the record establishes beyond a reasonable doubt that

any error was harmless. See *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). Even without the rifles in evidence, the prosecutor presented sufficient evidence to convict defendant of carrying a dangerous weapon, and of resisting and obstructing a police officer.

IV. INEFFECTIVE ASSISTANCE OF COUNSEL

A. Standard of Review

Defendant last asserts that his trial counsel was ineffective for failing to impeach the testimony of Officer Meehalder. As defendant did not move for a *Ginther* hearing before the trial court, our review is limited to errors apparent on the record. *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007); See also *People v Ginther*, 390 Mich 436, 442-443; 212 NW2d 922 (1973).

B. Analysis

"Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law." *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). "Findings on questions of fact are reviewed for clear error, while rulings on questions of constitutional law are reviewed de novo." *Jordan*, 275 Mich App at 667.

Criminal defendants are guaranteed the right to the effective assistance of counsel by both the United States and Michigan constitutions. US Const, Am VI; Const 1963, art 1, §20; *People v Cline*, 276 Mich App 634, 637; 741 NW2d 563 (2007).

> Where the issue is counsel's performance, a defendant must show that (1) counsel's performance was below an objective standard of reasonableness under professional norms and (2) there is a reasonable probability that, if not for counsel's errors, the result would have been different and [(3)] the result that did occur was fundamentally unfair or unreliable. Defense counsel is given wide discretion in matters of trial strategy because many calculated risks may be necessary in order to win difficult cases. There is therefore a strong presumption of effective counsel when it comes to issues of trial strategy. [This Court] will not second-guess matters of strategy or use the benefit of hindsight when assessing counsel's competence. [*People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007) (internal citations omitted).]

"Decisions regarding . . . whether to call or question witnesses are presumed to be matters of trial strategy." *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). In reviewing the existing record, there is nothing to indicate that defendant's trial counsel fell below the objective standard of reasonableness or made any errors in questioning Officer Meehalder.

Further, to sustain a conviction for carrying a dangerous weapon with unlawful intent, the prosecution must merely show that defendant (1) carried a firearm (2) "with intent to use the same unlawfully against the person of another." MCL 750.226; *People v Parker*, 288 Mich App 500, 504-506; 795 NW2d 596, lv den 488 Mich 947 (2010). Besides Meehalder, there was testimony from two other witnesses and defendant himself regarding his behavior while carrying

the rifle in the driveway. Whether defendant's intent was "unlawful" was a question properly reserved for the jury. See, e.g., *People v Harper*, 3 Mich App 316, 319; 142 NW2d 496 (1966).

V. CONCLUSION

There was sufficient evidence supporting defendant's extortion conviction. Moreover, any error in the trial court's decision regarding the motion to suppress was harmless. Lastly, there were no instances of ineffective assistance of counsel that require reversal. We affirm.

/s/ Kathleen Jansen
/s/ Michael J. Riordan