

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL PENA,

Defendant-Appellant.

UNPUBLISHED

November 26, 1996

No. 183916

LC No. 94-000321-FH

Before: Hoekstra, P.J., and Sawyer and T.P. Pickard,* JJ.

PER CURIAM.

Defendant Paul Pena was convicted of one count of malicious destruction of personal property over \$100, MCL 750.377a; MSA 28.609(1). He was sentenced to three years of probation with the last sixty days to be spent in the Kalamazoo County jail subject to the review of the court. Defendant was also assessed \$1,323.83 in costs, attorney fees and victim restitution. He appeals as of right. We affirm.

This case arises from a late night encounter between victims Ali Arghavani and his wife Jennifer Winters and defendant in the parking lot of the Burger King restaurant located on Stadium Drive in Kalamazoo on September 17, 1993, which resulted in damage to the victims' vehicle. The victims both testified at trial that defendant, who was behind them in the drive-through line, began beeping his horn at them and subsequently got out of his car and shouted obscenities and racial epithets at them without provocation. When the victims attempted to drive through the parking lot, defendant tried to block their way, first with his car and then with his body. Both victims testified that defendant next approached the driver's side of their vehicle and began kicking the window, mirror, and doors. The victims also believed that Edward Holliday, defendant's passenger, kicked the rear passenger side of the car, but they were unable to see his legs. Wayne Martin, a Burger King employee who was working in the drive-through at the time of the incident, also testified that he observed defendant shouting at the victims and kicking their car.

* Circuit judge, sitting on the Court of Appeals by assignment.

Although defendant admitted to making a comment to victim Arghavani about his ethnic origin, defendant denied acting aggressively toward the victims. Defendant further testified that the victims tried to run over him and actually came in contact with his knees, knocking him backward. It was then that defendant claims he defended himself by hitting the driver's side mirror of the victims' vehicle with his knee. According to defendant, Holliday hit the driver's side door of the victims' car because it came very close to striking Holliday when he got out of the car to investigate the situation. Holliday corroborated defendant's testimony that it was only he, not defendant, who kicked the front driver's side door one time.

Defendant argues on appeal that there was insufficient evidence presented at trial to prove that he specifically intended to damage the victims' mirror or that he damaged the driver's side doors. In reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecutor 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 Jacques*, 215 Mich App 699, 702-703; 547 NW2d 349 (1996). We find that the evidence was sufficient.

Defendant first maintains that there was insufficient evidence that he specifically intended to damage the driver's side mirror or any other part of the car. Malicious destruction of property is a specific intent crime, so there must be a showing of intent to commit the injury or destruction. *People v Culp*, 108 Mich App 452; 310 NW2d 421 (1981). Intent is a question of fact to be inferred from the circumstances by the trier of fact, *People v Kieronski*, 214 Mich App 222, 232; 542 NW2d 339 (1995), and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient, *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984). Circumstantial evidence and the reasonable inferences which arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

Based on the testimony of the victims and Martin, the jury could have reasonably concluded that defendant intended to damage the victims' vehicle. The victims testified that prior to his coming in contact with their vehicle, defendant honked his horn, yelled racial slurs and profanities and intentionally blocked their way with his vehicle and then with his body. Martin confirmed that defendant shouted and acted aggressively toward the victims. The hostility and aggressive behavior described by these witnesses provided the jury with sufficient circumstantial evidence upon which to infer that defendant intended to damage the victims' mirror despite his claim that he was acting only in self-defense.

Defendant also argues on appeal that there was insufficient evidence that defendant came in contact whatsoever with the driver's side door panels of the vehicle despite the victims' direct testimony that they saw defendant kicking the driver's side doors of their car. Martin also testified to seeing defendant kicking the victims' car. Defendant's argument is based in part on the fact that the jury should have accepted the testimony of the defense witnesses as true. Defendant specifically contends that Holliday's testimony that defendant did not kick the driver's side doors was more credible than that of the victim's because he was outside the car in better view of defendant's conduct, and because he risked self-incrimination by his testimony.

Even when reviewing an appeal based on the sufficiency of evidence, this Court must not interfere with the role of the jury. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). In *Wolfe*, our Supreme Court stated:

[An appellate court] must remember that the jury is the sole judge of the facts. It is the function of the jury alone to listen to testimony, weigh the evidence and decide the questions of fact. . . . Juries, not appellate courts, see and hear witnesses and are in a much better position to decide the weight and credibility to be given to their testimony [*Id.* at 514-515, quoting *People v Palmer*, 392 Mich 370, 375-376; 220 NW2d 393 (1974)].

Therefore, this Court should not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses in the instant trial. Credibility is a matter for the trier of fact to decide. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

In this case the jurors were presented with conflicting testimony which required them to make a determination concerning the credibility of each witness and the weight to afford each witness' testimony. The victims both testified that they saw defendant kick the driver's side door of their vehicle, while defendant and Holliday maintained that only Holliday came in contact with the driver's side door of the victims' car on one occasion. The jurors' role in this situation was to determine whose version of the facts to believe, and that was their exclusive right. The evidence was sufficient.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Timothy P. Pickard