

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL R. STURM, a/k/a/ MICHAEL
SAUNDERS

Defendant-Appellant.

UNPUBLISHED
October 20, 1998

No. 196343
Oakland Circuit Court
LC No. 95-139197 FC

Before: Fitzgerald, P.J., and Holbrook, Jr., and Cavanagh, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to rob while armed, MCL 750.89; MSA 28.284, first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), felonious assault, MCL 750.82; MSA 28.277, and three counts of possession of a firearm during the commission of a felony (hereinafter “felony-firearm”), MCL 750.227b(a); MSA 28.424(2). Subsequently, defendant pleaded guilty to one count of felon in possession of a firearm, MCL 750.224f; MSA 28.421(6), and three counts of being an habitual offender, second offense, MCL 769.10; MSA 28.1082.

Defendant was sentenced to twenty to forty years’ imprisonment for the assault with intent to rob while armed conviction; ten to twenty years’ imprisonment for the first-degree home invasion conviction; two to four years’ imprisonment for the felonious assault conviction; and concurrent terms of two years’ imprisonment on each of the felony-firearm convictions. All but the felony-firearm sentences were vacated. Defendant was then sentenced to concurrent prison terms of twenty to forty years, ten to thirty years and two to six years on each habitual offender, second offense conviction. Those sentences are to follow and run consecutive to defendant’s imprisonment for felony-firearm.

Defendant first argues that the evidence was insufficient to establish the intent necessary to support his convictions for assault with intent to rob while armed and first-degree home invasion. We disagree. When reviewing the sufficiency of the evidence in a jury trial, this Court must consider “the evidence in the light most favorable to the prosecution in order to determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.”

People v Wolfe, 440 Mich 508, 515; 489 NW2d 748, modified on other grounds 441 Mich 1201 (1992). “When deciding this issue, this Court should not interfere with the jury’s role of determining the weight of the evidence or the credibility of the witnesses.” *People v Warren*, 228 Mich App 336, 343; 578 NW2d 692 (1998). A conviction for assault with intent to rob while armed requires proof beyond a reasonable doubt that defendant had the specific intent to rob or steal. *People v Cotton*, 191 Mich App 377, 391; 478 NW2d 681 (1991). A conviction for first-degree home invasion requires proof beyond a reasonable doubt that defendant had the “intent to commit a felony or a larceny in the” home at the time of the breaking and entering. MCL 750.110a(2); MSA 28.305(a); *Warren*, *supra* at 347-348. “Given the difficulty in proving the actor’s state of mind, minimal circumstantial evidence indicating that defendant” had the requisite specific intent is considered sufficient. *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984). The intent to commit a larceny “may reasonably be inferred from the nature, time and place of the defendant’s acts before and during the breaking and entering.” *People v Uhl*, 169 Mich App 217, 220; 425 NW2d 519 (1988). “The time of night, the furtiveness of the defendant, and the defendant’s flight from the scene are all factors which the jury might consider in determining whether the defendant intended to steal.” *Bowers*, *supra* at 298.

In the present case, the evidence established that defendant went to the house at 4:00 a.m. armed with a gun, and with the assistance of his accomplices proceeded to break down both an outside and an inner door. Defendant then physically attacked and threatened with his gun several of the home’s occupants, and repeatedly demanded money. Furthermore, there is evidence that defendant and his friends knew that one of the victims had been paid the previous day with a check worth approximately \$1200. The prosecution also produced evidence at trial that after returning to the home of one of his accomplices, and knowing that the police were outside his residence, defendant asked another resident of the house where he could hide guns he had in his possession. Defendant also called one of the victims approximately two months after the incident to apologize for his involvement in the incident.

Although defendant now claims that he was there to collect a debt, he never mentioned anything to police about collecting a debt. Further, there was no evidence produced at trial that defendant or his accomplices stated that they were trying to collect on a debt when they demanded money from the victims. Moreover, even if the jury believed that defendant was there to collect a debt, there was testimony that indicated that this debt was drug related. While it is a question for the jury whether defendant had a felonious intent or acted under a bona fide claim of right to money owed from a debt, knowledge that the money was owed for illegal activities negates defendant’s ability to assert the claim because defendant was no longer under a “good faith” belief that the debt was legitimately owed. *People v Karasek*, 63 Mich App 706, 713-714; 234 NW2d 761 (1975).

Viewed in the light most favorable to the prosecution, we find that there was evidence presented at trial from which a reasonable jury could conclude beyond a reasonable doubt that defendant possessed the requisite specific intent to support his convictions for first-degree home invasion and assault with intent to rob while armed.

Next, defendant argues that the trial court’s instruction regarding his defense of claim of right misstated the law and should not have been given since there was no evidence presented at trial that the

debt was a drug debt or the result of an illegal transaction. The claim of right instruction is presented in its entirety below; the portion of the instruction challenged by defendant is highlighted:

Now, to be guilty of the crimes of robbery while being armed and/or home invasion in the first degree, as defined to you in these instructions, a person must intend to steal. In this case, there has been some evidence the Defendant took the property because of a claim of right to do so. If so, he did not intend to steal.

When does such a claim of right exist? It exists if the Defendant took the property honestly believing that it was legally his or that he had a legal right to have it. Two things are important. The Defendant's belief must be honest and he must claim a—a legal right to the property.

You should notice that the test is whether the Defendant honestly believed he had such a right. It does not matter what—if he is mistaken or should have known otherwise. It does not matter if the Defendant used force to get the property or if he knew that someone else claimed the property.

However, it is necessary that the claim of right be a bona fide one, and not a mere cover for a felonious undertaking. To be in good faith means the Defendant was legally entitled to the money or that his principal was legally entitled to the money and his claim was not the product of illegal activity.

The defendant does not have to prove he claimed—he claimed the right to take the property. Instead the Prosecutor must prove each of the—beyond a reasonable doubt the Defendant took the property while without a good faith claim[ed] right to do so.¹ [Emphasis added.]

Because defense counsel failed to object to the instruction at trial, we review the issue only for manifest injustice. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993).

We conclude that defendant's assertion that the disputed portion of the instruction misstates the law is without merit. The first sentence, which paraphrases a portion 52A CJS, Larceny, § 26, p 450 that was cited with favor by this Court in *Karasek, supra* at 713, simply reiterates the point that was made in the second paragraph of the instruction: that the claim of right being asserted must be based on an honest belief (i.e., not a mere cover) that defendant has a legal right to the property (i.e., that the taking was not felonious).

The second sentence of the challenged paragraph properly indicates that as a matter of public policy, debts incurred as a result of illegal activity are unenforceable in Michigan. Cf. *In re Forfeiture of \$25,505*, 220 Mich App 572, 584; 560 NW2d 341 (1996) (observing that “one never acquires a property right to proceeds . . . of illegal activity” [quoting *United States v Salinas*, 65 F3d 551, 554 (CA 6, 1995)]); *Int'l Recovery Systems, Inc v Gabler (On Rehearing)*, 210 Mich App 422, 423; 527 NW2d 20 (1995) (observing “that the enforcement of gambling debts are unenforceable in our

courts” as a matter of public policy, even though some forms of gambling are legal in Michigan). In other words, an individual cannot claim a legal right to the proceeds of a transaction which is by its very nature unenforceable. This is especially true in the case of illegal drug trafficking.²

Defendant also contends that there was no evidence that the debt involved an illegal drug transaction. We find such assertion not to be the case. The record clearly indicates that testimony was offered that the debt owed was based on the sale of crack cocaine. Indeed, the strongest testimony of the illicit source for the alleged debt came during defendant’s own cross examination of a prosecution witness.

Next, defendant argues that the cumulative effect of the above alleged errors denied him a fair trial. Because there was no error, we find defendant’s argument to be without merit. See *People v Sawyer*, 215 Mich App 183, 197; 545 NW2d 6 (1996).

Finally, defendant argues that his concurrent sentences of twenty to forty years’ imprisonment and ten to thirty years’ imprisonment violate the principle of proportionality. We disagree. Defendant had an extensive prior record as a juvenile, including felonious assault and an escape from a Boot Camp Program. He also had a prior record of unarmed robbery as an adult and had only recently completed his sentence on that offense at the time of the present incident. Furthermore, the record establishes with respect to the circumstances surrounding defendant’s present offenses that defendant, armed with a pistol, violently broke into the victims’ home in the middle of the night, kicked open a bedroom door and proceeded to terrorize his victims, who pleaded for their lives. He held a gun to one victim’s head and threatened to shoot her if she moved. He then bragged to his friends that when she ran for the phone to call the police, he had hit her with the pistol and that he had shot at her as she ran for the door. Given the circumstances surrounding the offense and the offender, we conclude that the sentences imposed were proportionate, and thus does not evidence an abuse of discretion on the part of the trial court. *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Donald E. Holbrook, Jr.

/s/ Mark J. Cavanagh

¹ Other than the highlighted portion, the instruction tracks CJI2d 7.5.

² Although the Legislature has not directly addressed the issue of the enforceability of a debt incurred by way of a drug transaction, we find it instructive that under MCL 333.7521(1)(f); MSA 14.15(7521)(1)(f), money “that is furnished or intended to be furnished in exchange for a controlled substance” is subject to forfeiture. This severe civil sanction is deemed necessary “in order to promote the health, safety, and welfare of Michigan citizens.” *In re Forfeiture of \$19,250*, 209 Mich App 20, 27; 530 NW2d 759 (1995).