STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LANEAL SMILEY,

Defendant-Appellant.

UNPUBLISHED
November 24, 1998

No. 199245
Recorder's Court
LC No. 95-013108

Before: Smolenski, P.J., and McDonald and Doctoroff, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529; MSA 28.797, and carjacking, MCL 750.529a; MSA 28.797(a). Defendant was sentenced as a third-offense habitual offender, MCL 769.11; MSA 28.1083, to fifteen to thirty years' imprisonment. We affirm.

Defendant's convictions arise out of an incident in which defendant allegedly sexually assaulted the complainant and then took her vehicle. At trial, the jury acquitted defendant of the various criminal sexual conduct offenses with which he was charged, but convicted him not only of armed robbery and carjacking but also of unlawfully driving away a motor vehicle (UDAA) and receiving, concealing or possessing stolen property in excess of $100. At sentencing, the trial court dismissed defendant's UDAA and possession of stolen property convictions pursuant to a stipulation of the parties.

On appeal, we first consider defendant's argument that his armed robbery conviction must be reversed because there was insufficient evidence presented that he possessed the specific intent to permanently deprive the complainant of her property.

When reviewing a claim of insufficient evidence, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Kozyra*, 219 Mich App 422, 428; 556 NW2d 512 (1996). One of the essential elements of the crime of armed robbery is the specific intent to permanently deprive the owner of his or her property. *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995). Intent may be inferred from all the facts and circumstances, including a defendant's conduct, and because of the difficulty of proving an actor's state

of mind, minimal circumstantial evidence is sufficient to sustain a conclusion that the actor entertained the requisite intent. *People v Gould*, 225 Mich App 79, 87; 570 NW2d 140 (1997); *People v Safiedine*, 163 Mich App 25, 29; 413 NW2d 711 (1987); *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984).

In this case, evidence was presented that after he forced his way into the complainant's vehicle with what the complainant believed was a gun, defendant assaulted the complainant and told her that he wanted the vehicle. Defendant thereafter drove away with the truck, which contained the complainant's money and other items of personal property. Viewing defendant's words and conduct in a light most favorable to the prosecution, we conclude that sufficient evidence was introduced from which a rational trier of fact could have concluded that defendant specifically intended to permanently deprive the complainant of her property.

Next, defendant argues his separate convictions of armed robbery and carjacking violate his federal and state constitutional protections against double jeopardy. See US Const, Am V; Const 1963, art 1, § 15. However, this Court recently held that a defendant's convictions of armed robbery and carjacking do not violate the Double Jeopardy Clauses of the Michigan and United States Constitutions even though the defendant committed the offenses in the same criminal transaction. *People v Parker*, 230 Mich App 337, 344-345; 584 NW2d 336 (1998). In light of this holding, we need not consider defendant's argument further.

Next, defendant argues that the trial court erred in failing to either send the jury out for further deliberations or declare a mistrial when one of the jurors expressed disagreement with the verdict while the jury was being polled. Defendant claims that he was thereby denied his right to a unanimous verdict.

While the Sixth Amendment of the federal constitution includes the right to a unanimous verdict in federal prosecutions, the Fourteenth Amendment does not mandate a unanimous verdict in noncapital state criminal prosecutions. *People v Cooks*, 446 Mich 503, 510; 521 NW2d 275 (1994). However, the Michigan Constitution does guarantee the right to a unanimous verdict in a state criminal trial. *Id*. at 510-511 (citing Const 1963, art 1, § 14). A valid verdict is not reached until deliberations are over, the result is announced in open court, and no dissent is registered by any of the jurors. *People v Mock*, 108 Mich App 384, 392; 310 NW2d 390 (1981). Votes taken in the jury room before the verdict is announced in open court are merely preliminary, and a juror may recant a previous assent to a verdict at any time before his express in-court assent to the polling. *Id*. If one juror expresses disagreement with the verdict during polling, the jury must be sent out for further deliberations. MCR 6.420(C); *People v Booker (After Remand)*, 208 Mich App 163, 168; 527 NW2d 42 (1994).

In this case, the following occurred during the jury poll:

Q. [*The Clerk*]: [Juror], was that and is that your verdict?

A. [*Juror*]: I mean –

Q. [*Trial Court*]: Speak up so we can hear you. Was that your verdict?

A. Pretty much, yes.

Q. It's either yes or it's no.

A. Not really, because I didn't really agree with some of that, but –

Q. You voted guilty, did you not? You voted as indicated on this form; is that correct?

A. We didn't really vote. I just went on a compromise thing.

Q. That is not my question to you. Is this your verdict or not?

A. Yes, it is.

Q. Pardon.

A. Yes, it is.

The trial court continued to poll the remaining jurors and accepted the jury's verdict.

In *Booker, supra* at 166, n 1, one of the jurors stated, "I have doubt." In *People v Bufkin*, 168 Mich App 615, 616; 425 NW2d 201 (1988), the eleventh juror said that the verdict was not hers. Unlike these cases, the juror's first response in this case was "Pretty much, yes." In light of this somewhat equivocal response, the trial court questioned the juror to determine whether the verdict announced was in fact this juror's verdict. The juror apparently wanted to explain the verdict, but the court persisted in trying to determine simply whether the verdict announced was in fact this juror's verdict. The juror then twice assented to the verdict. We do not agree with defendant's contention that the trial court's questioning was so unrelenting or coercive that the juror had no choice but to assent, thereby rendering his verdict meaningless. Rather, in asking the juror "Is this your verdict or not?" the court conveyed that the juror had a choice to agree or disagree with the verdict. Where the juror did not recant or disagree, but rather specifically agreed to the verdict, we conclude that the trial court did not err in accepting the verdict.

Finally, defendant argues that the verdict was the result of an improper compromise as evidenced by the juror's statement that "I just went on a compromise thing." Specifically, defendant notes that the jury clearly disbelieved the complainant's testimony where it acquitted him of the numerous criminal sexual conduct offenses with which he was charged. Defendant contends that because he was later found with the complainant's vehicle, the jury must have believed that something inappropriate must have occurred and therefore improperly compromised by finding him guilty of armed robbery, carjacking, UDAA, and receiving, concealing or possessing stolen property. Defendant also contends that his armed robbery and carjacking convictions are the result of an improper compromise where there was insufficient evidence to support his armed robbery conviction and his separate convictions for armed robbery and carjacking violate double jeopardy.

However, credibility is a matter for the trier of fact to determine. This Court will not resolve credibility issues anew. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). Furthermore, the trier of fact has the right to believe all, part, or none of the testimony of a witness. *People v Goodchild*, 68 Mich App 226, 235; 242 NW2d 465 (1976). Here, the jury's verdict was not irreconcilable. *People v Graves*, 458 Mich 476, 488; 581 NW2d 229 (1998). Rather, the jury must have simply disbelieved the complainant's testimony concerning defendant's alleged sexual assaults, but believed her testimony concerning the robbery and carjacking. In addition, where we have already determined that defendant's armed robbery conviction was supported by sufficient evidence and his separate convictions of armed robbery and carjacking do not violate double jeopardy, there were no legally or factually unsupported charges that were submitted to the jury. *Id*. Finally, although a juror stated that he had "went on a compromise thing" this juror ultimately agreed that the jury's verdict was his verdict. Thus, we find no unresolved jury confusion. *Id*. Accordingly, we find no improper compromise verdict. *Id.*

Affirmed.

/s/ Michael R. Smolenski
/s/ Gary R. McDonald
/s/ Martin M. Doctoroff