STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NATHANIEL MAURICE HATCHETT,

Defendant-Appellant.

UNPUBLISHED
May 19, 2000

No. 211131
Macomb Circuit Court
LC No. 97-001497-FC

Before: Murphy, P.J., and Collins and Owens, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of carjacking, MCL 750.529a; MSA 28.797(a), armed robbery, MCL 750.529; MSA 28.797, kidnapping, MCL 750.349; MSA 28.581, and three counts of first-degree criminal sexual conduct ("CSC") (penetration under circumstances involving any "other felony"), MCL 750.520b(1)(c); MSA 28.788(2)(1)(c). Defendant was sentenced to concurrent terms of twenty-five to forty years in prison for the carjacking conviction and each of the first-degree CSC convictions and fifteen to forty years for the armed robbery and kidnapping convictions. Defendant now appeals as of right. We affirm.

Defendant contends that insufficient evidence was presented to establish his identity as the perpetrator in this case. When reviewing a challenge to the sufficiency of the evidence, this Court must examine the evidence in a light most favorable to the prosecution to determine whether there was sufficient evidence to justify a rational trier of fact in finding the defendant guilty beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-516; 489 NW2d 748 (1992); *People v Marsack*, 231 Mich App 364, 370; 586 NW2d 234 (1998). Circumstantial evidence and the reasonable inferences which arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999); *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996).

We find that the prosecution presented overwhelming evidence to sustain the trial court's finding that defendant was the person who committed these crimes. The victim testified that when the perpetrator first got into her car and demanded her car keys, she saw his face; that she was able to see the side of his face while he was driving; that she got a good look at him when he got on top of her and

vaginally penetrated her; that streetlights illuminated most of the route driven by the perpetrator; and that she had no doubt that defendant was the person who committed these crimes. Defendant was driving the victim's vehicle at the time of his arrest, three days after the crimes were committed. Also, a pubic hair was found on the passenger-side floor of the victim's car. Testing indicated that the hair had characteristics matching those of defendant's known hair sample.

Additionally, defendant made a detailed confession to the investigating police officers, admitting that he committed each of the charged crimes except the robbery. Officer Williams and Detective Van Sice testified that defendant's statement included information that only the perpetrator of the crimes would know. Defendant stated that he went to Super K-Mart in Sterling Heights on November 11, 1996, where he "forced" a "white lady" into her car; that he threatened to shoot her if she did not comply with his orders; that he told her not to look at him "or you will die"; that he implied that he had a gun by reaching into his coat, and that he actually "had a gun"; that he drove off, first "feeling on her" and then ordering her to "suck [his] d***"; that, after riding around for awhile, he stopped and "f***** her"; that he then "threw her out of the car" after telling her, "[Y]ou're lucky, b****, tonight"; that there was a baby chair in the victim's car, which he threw out; that, because he had thrown the car keys away after the incident, he started the car a couple of days later by popping the ignition out and using a screwdriver; and that, on the day of his arrest, he picked up four friends and stopped at a gas station before being arrested. Defendant's strikingly detailed confession is not merely a blanket admission; rather, it is both fully corroborative of the victim's version of the events on the evening in question, and wholly consistent with the post-incident facts ascertained during the police investigation.

Defendant contends that reasonable doubt was established by three alibi witnesses he presented. However, for various reasons the trial court found that the alibi witnesses were not credible. This Court will not interfere with the such credibility determinations. *Wolfe, supra* at 514-515; *People v Noble*, 238 Mich App 647, 657; ___ NW2d ___ (1999). Defendant additionally contends that his innocence was established by the results of a DNA analysis performed on semen found in the victim's vagina and underpants. However, although DNA analysis of the two identifiable genetic loci on the victim's vaginal swab and four identifiable loci on her underpants established that defendant was not the donor of that material, there are several plausible explanations for these results; for example, the donor might have been the victim's spouse. Furthermore, the victim told the treating nurse that defendant ejaculated "on" her, and she told the treating physician that she was only "fairly certain" that defendant ejaculated at all; therefore, it is altogether possible that defendant's semen would not be found in the victim's vagina or in her underpants.

In determining whether the evidence presented was sufficient to support a conviction, all conflicts in the evidence must be resolved in favor of the prosecution. *McRunels, supra* at 181; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). We agree with the trial court that while the DNA test results introduce a slight doubt as to defendant's identity as the perpetrator of these crimes, in the face of the overwhelming evidence to the contrary these results do not rise to the level of reasonable doubt. Viewing the evidence in its entirety, we are in accord with the conclusion of the trial court that defendant was sufficiently identified.

Defendant raises the additional specific argument that insufficient evidence was presented to establish that he was "armed" within the meaning of MCL 750.529; MSA 28.797, which requires that a robber be "armed with a dangerous weapon, or any article used or fashioned in a manner to lead the person so assaulted to reasonably believe it to be a dangerous weapon."

Defendant is correct in his assertion that a subjective belief that a weapon exists is insufficient to satisfy the armed robbery statute. *People v Banks*, 454 Mich 469, 472; 563 NW2d 200 (1997). However, in *People v Jolly*, 442 Mich 458; 502 NW2d 177 (1993), the Court stated:

> *an object pointing out from under a coat, together with statements threatening a victim with being shot, clearly satisfies the statutory definition of armed robbery*. In such a case, there is evidence of actual possession of a weapon or article and the testimony regarding statements that, if believed, make clear an intent to convince the victim of the existence of such a weapon or article. [*Id.* at 468-469 (emphasis supplied).]

Accordingly, the Court held, where the victim testified that he believed the defendant had a gun based on the facts that there was a bulge in the defendant's vest and that the defendant's female companion told the victim that the defendant had a gun and would shoot him if he did not comply with their demands for money, there was sufficient evidence to submit the issue of armed robbery to the jury. *Id.* at 463-464, 470-471.

The facts in the instant case are similar to those in *Jolly* with respect to defendant's "armed" status. The victim testified that defendant kept repeating that he had a gun and that he would kill her if she did not follow his instructions. The victim further testified as follows:

> *Q.* Did [defendant] make any motions at any point up to this point? He ever make any motions with his hands or anything to indicate the same as his words were indicating that he had a weapon?
>
> *A.* He got in my car, he sat down, and he had his hand in his pocket, and he told me he had a gun.
>
> *Q.* And you indicated while you were giving that testimony, you reached over with your right hand and put it in the area of your right hip pocket; is that right? When you just testified, is it the case that you reached over and put your own hand near your right hip pocket to describe to the Court what this person did?
>
> *A.* Yes.

In addition, defendant's own statements to the police support a finding that he either had a gun or that he used his hand to induce the victim's belief that he was armed:

> *Q.* What happened next, sir?

A. Gets out the blue four-door Citation, walks up to the car, white lady—where white lady was standing at. I push her in the car, forced her in the car. She tried to wrestle with me. I forced her in the car.

Q. *Did you imply that you had a weapon?*

A. *Yes, I did.*

Q. *What kind of weapon did you have?*

A. *I had a gun.*

Q. Okay. Then what happened, sir?

A. Forced her in the car. She wouldn't get in. *I reached in my coat like I had one. Told her to get in the car or I will shoot you*. She got in the car. I got in the car. . . . [Emphasis supplied.]

We conclude that sufficient evidence was presented from which the factfinder could reasonably determine that defendant was either actually "armed with a dangerous weapon," or that he was armed with "any article used or fashioned in a manner to lead the person so assaulted to reasonably believe it to be a dangerous weapon." MCL 750.529; MSA 28.797.

Affirmed.

/s/ William B. Murphy
/s/ Jeffrey G. Collins
/s/ Donald S. Owens