

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRUCE ALOYISIOUS DAVENPORT, a/k/a
BRUCE A. DAVENPORT, JR.,

Defendant-Appellant.

UNPUBLISHED
February 23, 2001

No. 219148
Oakland Circuit Court
LC No. 96-144059-FC

Before: White, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of carjacking, MCL 750.529a; MSA 28.797(a), and sentenced to a term of one to fifteen years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first contends that the trial court erred by not granting his motion, brought at the close of the prosecutor's proofs, for a directed verdict of acquittal. We review this claim by applying the same standard as the trial court. *People v Daniels*, 192 Mich App 658, 665; 482 NW2d 176 (1992).

“[T]he trial judge when ruling on a motion for a directed verdict of acquittal must consider the evidence presented by the prosecution up to the time the motion is made, . . . 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 Vincent*, 455 Mich 110, 121; 565 NW2d 629 (1997), quoting *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979).]

As we noted when this same case was before this Court in a prior appeal:

The carjacking statute, MCL 750.529a(1); MSA 28.797(a)(1), provides:

A person who by force or violence, or by threat of force or violence, or by putting in fear robs, steals, or takes a motor vehicle as defined in [MCL 750.412; MSA 28.644] from another person, in

the presence of that person or the presence of a passenger or in the presence of any other person in lawful possession of the motor vehicle, is guilty of carjacking, a felony punishable by imprisonment of life or for any term of years.

Thus, in order to sustain a carjacking conviction, the prosecution must prove (1) that the defendant took a motor vehicle from another person, (2) that the defendant did so in the presence of that person, a passenger, or any other person in lawful possession of the motor vehicle, and (3) that the defendant did so either by force or violence, by threat of force or violence, or by putting the other person in fear. *People v Green*, 228 Mich App 684, 694, 580 NW2d 444 (1998). [*People v Davenport*, 230 Mich App 577, 578-579; 583 NW2d 919 (1998).]

Defendant does not contest that the evidence in the prosecutor's case-in-chief was sufficient to establish the first two elements of carjacking (i.e., that he took a motor vehicle from another person, and that he did so in the presence of that person). Defendant argues that the third element was not established because: (1) he did not produce a weapon; (2) he did not strike or threaten to strike the victim; and (3) he merely told the victim four or five times "Gimme the keys" in a monotone voice as he approached with his hand out. Defendant admits that the victim was in fear, so we assume he is asserting, in effect, that the victim's fear was subjective and irrational and that the evidence did not show that actions on defendant's part were the cause of the victim's fear.

However, the evidence belies defendant's argument. Defendant and his companion were both physically bigger than the victim. The victim was alone and outnumbered in a dark parking lot when defendant made a demand for something that no reasonable person would anticipate that the victim would willingly provide to a stranger gratuitously. The fact that defendant spoke in a monotone voice simply invited the victim to infer that defendant was confident, perhaps on the basis of being armed, that he could achieve his purpose without raising his voice—and the testimony indicated that the victim drew such an inference. Clearly, a reasonable person in the victim's position would believe that failing to submit to defendant's demands would be attended by dangerous consequences. Accordingly, there was sufficient evidence from which a rational jury could have concluded, beyond a reasonable doubt, that all of the essential elements of carjacking had been proven—including causation with regard to the "putting in fear" element. Therefore, the trial court did not err by denying defendant's motion for a directed verdict of acquittal.

Defendant next argues that his one-year minimum sentence violates the principle of proportionality set forth in *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

Because defendant has already been released on parole, this issue is moot, and we decline to address it. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

Affirmed.

/s/ Helene N. White

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra