

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KARLOS LATWIAN HARRIS,  
a/k/a G-MONEY HARRIS,

Defendant-Appellant.

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UNPUBLISHED  
February 26, 2002

No. 225779  
Livingston Circuit Court  
LC No. 99-011183-FH

Before: Neff, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

A jury convicted defendant of conspiracy to commit a breaking and entering of a store, MCL 750.110; MCL 750.157a. Defendant was sentenced to 3 ½ to 15 years' imprisonment. He appeals as of right. We affirm.

Defendant contends that there was insufficient evidence at trial to convict him of conspiracy to commit breaking and entering. Defendant's essential argument is that there was insufficient evidence of a conspiracy because there was no evidence of a breaking and entering, and therefore there was no basis upon which to infer a conspiracy.

When determining whether sufficient evidence has been presented to sustain a conviction, we 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 proved beyond a reasonable doubt. *People v Godbold*, 230 Mich App 508, 522; 585 NW2d 13 (1998). When addressing an issue concerning the sufficiency of evidence, this Court will not interfere with the jury's role of determining the weight of evidence or credibility of witnesses. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Circumstantial evidence and reasonable inferences may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

Michigan Courts have repeatedly held that "conspiracy is separate and distinct from the substantive crime that is its object," *People v Mass*, 464 Mich 615, 632; 628 NW2d 540 (2001), and that "it is not necessary to establish any overt act in furtherance of the conspiracy as a component of the crime." *People v Meredith*, 209 Mich App 403, 411; 531 NW2d 749 (1995),

quoting *People v Carter*, 415 Mich 558, 567; 330 NW2d 314 (1982), overruled in part on other grounds in *People v Robideau*, 419 Mich 458; 355 NW2d 592 (1984). Therefore, defendant's principal argument has no merit.

Also, there was sufficient evidence presented at trial of a conspiracy. Conspiracy is a partnership in criminal purposes. *People v Justice (After Remand)*, 454 Mich 334, 345; 562 NW2d 652 (1997). The gist of the offense lies in the agreement. *Id.* The crime is complete upon the formation of the agreement. *Id.*, 345-346. "Identifying the objectives and even the participants of an unlawful agreement is often difficult because of the clandestine nature of criminal conspiracies. Thus direct proof of the conspiracy is not essential; instead, proof may be derived from the circumstances, acts, and conduct of the parties." *Id.*, 347. "Inferences may be made because such evidence sheds light on the coconspirator's intentions." *Id.* Inferences must be reasonable. *Id.*, 348.

The evidence established that defendant and his cousin were prowling around a Bose store in an outside outlet mall at approximately 4:30 in the morning, dressed in dark clothing and with one of them carrying a ski mask with eyeholes cut into it, despite the fact that it was June 10. Furthermore, the men fled when police approached. Although defendant denied any involvement in a breaking and entering, and offered an innocent explanation for his presence and conduct, viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence for a jury to infer beyond a reasonable doubt a conspiracy to break and enter the store from the circumstances, acts and conduct of the parties.

Additionally, defendant contends that this case should be remanded for resentencing because of the trial court's departure from the sentence guidelines based on factors already accounted for in scoring the guidelines. We disagree.

The Supreme Court's sentencing guidelines were superseded by guidelines developed by the Sentencing Commission pursuant to MCL 769.31 *et seq.* MCL 769.34(1). The Supreme Court's sentencing guidelines apply to offenses committed before January 1, 1999, MCL 769.34(1), *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 316 (2000), while the statutory guidelines apply to offenses committed on or after January 1, 1999, MCL 769.34(2), *People v Greaux*, 461 Mich 339, 342 n 5; 604 NW2d 327 (2000). Defendant's crime was committed on June 10, 1999 and therefore, the statutory guidelines apply.

Defendant's prior record variable score was 25, and his offense variable score, originally assessed at 20 points, was increased at sentencing by 10 points for OV 13, thereby increasing the total to 30 points. Therefore, according to the habitual class D offenses sentencing grid, defendant's recommended sentence was 10 to 28 months. Michigan Sentencing Guidelines Manual (2d ed), p 71. Defendant was sentenced to a minimum of 42 months. Therefore, the trial court did indeed depart from the statutory sentencing guidelines and we hold that the trial court did not abuse its discretion in doing so.

Under the statutory sentencing guidelines, a court may depart from the appropriate sentence range "if the court has a *substantial and compelling* reason for that departure and states on the record the reasons for departure." MCL 769.34(3) (emphasis added). A trial court's determination that the objective and verifiable factors present in a particular case constitute substantial and compelling reasons to depart from the statutory minimum sentence shall be

reviewed for abuse of discretion.” *People v Babcock*, 244 Mich App 64, 75-76; 624 NW2d 479 (2000), quoting *People v Fields*, 448 Mich 58, 77; 528 NW2d 176 (1995).

The sentencing guidelines statute also states:

The court shall not base a departure on an offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range unless the court finds from the facts contained in the court record, including the presentence investigation report, that the characteristic has been given inadequate or disproportionate weight. [MCL 769.34(3)(b).] (Emphasis added.)

Defendant argues that the trial court improperly departed from the statutory sentencing guidelines because its reasons for departure, three untried charges, were already accounted for in the scoring of OV 13. OV 13, “Continuing Pattern of Criminal Behavior,” states to score 10 points if “[t]he offense was part of a pattern of felonious criminal activity involving a combination of 3 or more crimes against a person or property.” Guidelines Manual, *supra*, p 31. OV 13 was initially scored at 0 points. At sentencing, the prosecutor argued that OV 13 should be scored at 10 points because the presentence investigation report reflected that defendant had three pending breaking and entering charges. The trial court not only agreed with the prosecution but gave the following additional reason for departing from the guidelines:

I’m satisfied that it is appropriate to exceed the guidelines in this case. I’m satisfied that you had three B&E’s that you’re charged with, committed while you were on bond for this offense, you have the Westland B&E, and I’m satisfied that those things simply do not get appropriately factored into the guidelines that have been scored. (Emphasis added.)

It is plain from the quoted language that, consistent with the statute, the trial court expressed understandable concern that while on bond for the instant offense, defendant engaged in three similar offenses. Therefore, the trial court believed, correctly in our view, that this was not “appropriately factored” into the guidelines. Indeed, it is one thing to have other offenses, it is quite another and much more telling to commit virtually the same crime three times while on bond pending disposition of the similar crime. Clearly, the trial court had a substantial and compelling reason for departing from the statutory sentencing guidelines.

We affirm defendant’s conviction and sentence.

/s/ Janet T. Neff  
/s/ Mark J. Cavanagh  
/s/ Henry William Saad