

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN WITT,

Defendant-Appellant.

UNPUBLISHED

March 1, 2002

No. 228564

Ingham Circuit Court

LC No. 99-075271-FH

Before: Bandstra, P.J., and Murphy and Murray, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of fourth-degree fleeing and eluding a police officer, MCL 257.602a(2), and the trial court sentenced him to two years' probation with the first sixty days to be spent in jail. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that there was insufficient evidence to support his conviction. It was undisputed that defendant failed to stop his pickup truck when an Ingham County deputy sheriff sought to pull him over by turning on his overhead flashing lights, sounding his siren, and shining a spotlight at defendant and his passenger in the truck. Defendant, however, contended that he acted under duress because the passenger, whom he had just met for the first time at a bar, prevented him from stopping the truck. He testified that when the pair noticed the deputy following them, the passenger pulled what defendant thought was a gun and put it in defendant's side, leading him to believe that he might be harmed if he pulled over.

When reviewing a challenge to the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could find the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Circumstantial evidence, and reasonable inferences arising from it, can constitute satisfactory proof of the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). This Court should not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *Wolfe, supra* at 514-515.

The defense of duress is successfully raised where the defendant presents evidence from which a jury could conclude (1) there was threatening conduct sufficient to create in the mind of

a reasonable person the fear of death or serious bodily harm, (2) the conduct in fact caused such fear of death or serious bodily harm in the mind of the defendant, (3) the fear or duress was operating on the mind of the defendant at the time of the alleged act, and (4) the defendant committed the act to avoid the threatened harm. *People v Terry*, 224 Mich App 447, 453; 569 NW2d 641 (1997). Once a defendant successfully raises the defense, the prosecution has the burden of showing, beyond a reasonable doubt, that the defendant did not act under duress. *Id.* at 453-454. Whether the defendant acted under duress is a question for the finder of fact. *People v Luther*, 394 Mich 619, 622; 232 NW2d 184 (1975).

On this record, and viewing the evidence in a light most favorable to the prosecution, we conclude that the evidence was sufficient to allow the jury to conclude beyond a reasonable doubt that defendant was not acting out of a reasonable fear of death or bodily harm when he refused to stop his truck. The deputy described defendant as “surprisingly calm” when he was arrested and defendant did not indicate that he had been threatened or that the passenger demanded that he flee until he was questioned by the deputy approximately one hour after his arrest. Defendant admitted that he never saw a gun, the deputy saw nothing in the passenger’s hands when the passenger tried to jump out of the moving truck, and no weapon was found in the truck. Defendant also admitted that at some point during the chase he concluded that the passenger would not shoot him. While defendant testified that he initially feared the passenger would harm him, the jury evidently chose not to believe his testimony. That credibility determination was for the jury, *Wolfe, supra* at 514-515, and we decline to disturb its conclusion that defendant was not acting under duress when he failed to stop his truck.

Affirmed.

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Christopher M. Murray