

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER BRIDGES,

Defendant-Appellant.

UNPUBLISHED

December 18, 2003

No. 242729

Wayne Circuit Court

LC No. 01-013235

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

PER CURIAM.

Defendant appeals as of right his convictions, following a jury trial, of armed robbery, MCL 750.529, felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to 8 to 20 years' imprisonment on the robbery conviction, 8 to 20 years' imprisonment on the assault conviction, and a prison term of 2 years on the felony-firearm conviction. We affirm.

I. BASIC FACTS

Late in the evening on an October night in 2001, the victim had finished visiting with friends at a home in Detroit and was returning to his vehicle. When he neared his vehicle, the victim was approached by two males, including defendant,¹ who then walked past the victim. But defendant quickly turned around and told the victim to "run" his pockets. At first, the victim thought defendant was joking around; however, when defendant displayed a gun, the victim realized that defendant was intending to commit a robbery. Defendant told the victim: "You think I'm playing." Defendant again demanded that the victim run his pockets, and the victim, on a self-described adrenaline rush, started walking towards defendant. Defendant then began shooting at the victim's feet, and the victim stopped. The victim then removed about \$200 from his pocket and threw it on the ground. Defendant then demanded the victim's car keys. The victim refused to turn over his keys and started walking away from defendant, at which point defendant shot him in the back of the thigh. The victim fell to the ground, yelling that he had been shot. Defendant and his accomplice jumped in a white truck and sped off. The victim

¹ The victim testified that he recognized and knew of defendant, and that defendant was called "little Walt." The victim, however, did not know defendant personally.

subsequently identified defendant in a photographic lineup. Police officer testimony regarding statements made by the victim after the crime was fairly consistent with the victim's account of the crime with some discrepancies concerning, in part, whether the victim was accompanied by another individual and whether defendant actually shot numerous times at the victim's feet before the victim turned over his money.

II. ANALYSIS

A. Sufficiency of the Evidence – Armed Robbery, Asportation

Defendant first presents a sufficiency of the evidence argument, stating in his appellate brief as follows:

It is clear from the record of testimony made on trial that there was no testimony whatever that defendant in any manner or to any extent moved the money which the complainant had thrown to the ground. Hence, there was no testimony before the jurors upon which the jurors could conceivably find or infer the necessary element of movement by the defendant of the money which complainant threw to the ground.

When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. *Id.* at 514-515. Circumstantial evidence and reasonable inferences arising from the evidence can constitute sufficient proof of the elements of a crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). Where there is conflicting evidence, our resolution is made in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of armed robbery are: (1) an assault, (2) a felonious taking of property from the victim's presence or person, (3) while the defendant is armed with a weapon described in the statute, MCL 750.529. *People v Rodgers*, 248 Mich App 702, 707; 645 NW2d 294 (2001). Any movement of the property being taken, even if by the victim under the direction of the defendant, armed with a dangerous weapon, constitutes asportation for purposes of armed robbery despite the defendant never reducing the money or property to physical possession. *People v Randolph*, 466 Mich 532, 541; 648 NW2d 164 (2002); *People v McGuire*, 39 Mich App 308, 314-315; 197 NW2d 469 (1972); *People v Royce Alexander*, 17 Mich App 30, 32-33; 169 NW2d 190 (1969).²

It is true that the victim did not testify as to what happened with the money after he threw it on the ground. The victim told police officers that he had simply turned over his money to defendant without reference to throwing the money on the ground. Police officers who investigated the crime scene did not testify to finding any money at the scene. We find that there

² The jury was instructed consistent with this definition. CJI2d 18.1.

was sufficient evidence to infer that defendant took the money when leaving the crime scene. Regardless, the mere act of the victim removing the money from his pocket, on defendant's direction while defendant was armed, and throwing it to the ground was sufficient for purposes of armed robbery. There is no basis for reversal.

B. Jury Instruction – Option to Return No Verdict on Disagreement

Defendant next argues that he was denied his constitutional rights where the trial court, through its instructions, coerced the jury to return a verdict of either not guilty or guilty without informing the jurors that they could return no verdict at all because of a disagreement.

This Court reviews claims of instructional error de novo. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002). Jury instructions must be read in their entirety to determine if there is an error that requires reversal. *People v Kris Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001). Even if the instructions are somewhat imperfect, they do not create error where the instructions fairly presented the issues to be tried and sufficiently protected the defendant's rights. *Id.*

Defendant failed to object to the jury instructions, and in fact affirmatively voiced approval of the instructions; therefore, he has waived his right to appellate review. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000)(one who waives his rights may not then seek appellate review of a claimed deprivation of those rights). Moreover, even if we review the issue under plain-error analysis, *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999), there is no basis for reversal.

Claims of coerced verdicts are reviewed case by case, considering the facts, circumstances, and particular language used by the trial court. See *People v Pollick*, 448 Mich 376, 385-386; 531 NW2d 159 (1995). Here, the jury was properly instructed on its ability to find defendant guilty or not guilty of the crimes charged. Further, the trial court instructed the jurors that they each had to make up their own mind, express their opinions, listen to fellow jurors, and:

Try your best to work out your differences. However, although you should try to reach agreement, none of you should give up your honest opinion about the case just because other jurors disagree with you or just for the sake of reaching a verdict. In the end, your vote must be your own and you must vote honestly and in good conscience.

The trial court's instruction on jury deliberations and verdicts mimicked CJI2d 3.11, which has been ruled to be a sound instruction. *Pollick, supra* at 386. The instructions, read as a whole, properly reflected the applicable law, and the trial court did not commit error. See *People v Burden*, 395 Mich 462, 468-469; 236 NW2d 505 (1975).

C. Jury Instruction – Flight

Defendant finally argues that the trial court erred in instructing the jury on "flight," where there was no evidence that defendant fled consistent with the true meaning of flight as established by law; defendant was merely leaving the scene of the crime. The trial court instructed the jury:

There has been some evidence that the defendant tried to run away or hide after the alleged crime he was accused of. This evidence does not prove guilt. A person may run or hide for innocent reasons such as panic, mistake or fear. However, a person may also run or hide because of a consciousness of guilt. You must decide whether the evidence is true and if true whether it shows the defendant had a guilty state of mind.

This instruction is consistent with CJI2d 4.4. The determination whether a jury instruction is applicable to the particular facts of a case is left to the sound discretion of the trial court. *People v Ho*, 231 Mich App 178, 189; 585 NW2d 357 (1998). Evidence of flight is admissible as such evidence may be probative of a consciousness of guilt, although flight by itself is insufficient to sustain a conviction. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). “The term ‘flight’ has been applied to such actions as *fleeing the scene of the crime*, leaving the jurisdiction, running from the police, resisting arrest, and attempting to escape custody.” *Id.* (emphasis added; citation omitted).

We first note that there was no objection to the challenged instruction, and moreover, as stated previously, defendant voiced satisfaction with the instructions. Therefore, defendant has waived this argument for purposes of appellate review. *Carter, supra* at 215. Regardless, there was evidence supporting the instruction where the victim testified that defendant fled the scene with his accomplice in a vehicle after the shooting. Moreover, the instruction did not rise to the level of plain error affecting defendant’s substantial rights. *Carines, supra* at 763-764.

Affirmed.

/s/ Bill Schuette
/s/ William B. Murphy
/s/ Richard A. Bandstra