STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRANCE NATHANIEL HAYNES,

Defendant-Appellant.

UNPUBLISHED
November 21, 2006

No. 264230
Wayne Circuit Court
LC No. 05-001961-01

Before: Servitto, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

A jury convicted defendant of one count of armed robbery with respect to William Dickey, Sr., MCL 750.529; carjacking, MCL 750.529a; one count of felonious assault with respect to William Dickey, Jr., MCL 750.82; one count of assault with intent to do great bodily harm less than murder with respect to William Dickey, Sr., MCL 750.84; first-degree home invasion, MCL 750.110a(2); felon in possession of a firearm, MCL 750.224f; and possession of a firearm during the commission of a felony, MCL 750.227b. The court sentenced defendant as an habitual offender, third offense, MCL 769.11, to prison term of 35 to 60 for the armed robbery conviction, 30 to 60 years for the carjacking conviction, one to four years for the felonious assault conviction, five to ten years for the assault with intent to do great bodily harm conviction, 12 to 20 years the first-degree home invasion conviction, two to five years for the felon in possession of a firearm conviction, and two years for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the prosecutor failed to present sufficient evidence to support the carjacking conviction because the evidence showed that the Dickeys were not in or near the vehicle when defendant took it. This Court reviews the evidence de novo in the light most favorable to the prosecution to determine whether a rational fact finder could find the elements of the crime proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992); *People v McGhee*, 268 Mich App 600, 612; 709 NW2d 595 (2005); *People v Hardiman*, 466 Mich 417, 429; 646 NW2d 158 (2002). "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *Id*.

The offense of carjacking has three elements: (1) the use of force or violence, or threat of force or violence, or putting in fear; (2) the robbing, stealing, or taking of a motor vehicle from another person; and (3) in the presence of that person, of a passenger, or of any other person in

lawful possession of the motor vehicle. *People v Davenport*, 230 Mich App 577, 579; 583 NW2d 919 (1998); *People v Parker*, 230 Mich App 337, 343; 584 NW2d 336 (1998). The taking of a motor vehicle is considered to be "in the presence of the person" when it is "within his reach, inspection, observation or control, that he could, if not overcome by violence or prevented by fear, retain his possession of it." *People v Raper*, 222 Mich App 475, 482; 563 NW2d 709 (1997). A motor vehicle is taken from a person once that person loses possession of it due to the violence or fear. *People v Green*, 228 Mich App 684, 695; 580 NW2d 444 (1998).

The prosecution presented sufficient evidence to support the carjacking conviction. Defendant put the Dickeys in fear by sporting a silver revolver and asking Dickey, Sr., how much he valued his life. Defendant then asked the men for their wallets. Defendant pulled out Dickey, Sr.'s license, studied it, and threw the wallet on the floor. Defendant told the men that he knew where they lived, and if they called the police, he would kill them. Defendant then asked for the keys to the van that was parked in the driveway. Dickey, Sr., had a blue Ford van with $15,000 to $18,000 worth of tools inside.

Until this point, Dickey, Sr., had possession and control of the keys, and was therefore, in control of the van. *Raper*, *supra* at 483. Dickey, Sr. lost possession and control of the van when he gave defendant the keys and defendant made him point out the ignition key. Defendant went out the door and the Dickeys heard the van start up. Dickey, Jr. picked up a hammer, and ran out the door. Dickey, Sr., followed and saw defendant backing out of the driveway. Dickey, Jr. hit the driver's side window with a hammer, and the window shattered. Both Dickeys struggled with defendant while defendant was still in the van trying to leave. During this struggle, the van was within the reach, observation, and inspection of Dickey, Sr., and he could have retained possession of it but for the violence. *Raper, supra* at 482. Defendant took Dickey, Sr.'s van, at gunpoint, and in his presence. The evidence was sufficient to support the carjacking conviction.

Defendant next claims that the prosecutor improperly vouched for the victims' credibility. In raising this issue, defendant points to the prosecutor's suggestion that the jury to look at the demeanor of the witnesses and use it as a factor to place each witness on the scale of credibility. The prosecutor then stated that the Dickeys should place high on that scale because they sought to answer both the prosecutor's and defense counsel's questions, whereas defendant avoided questions, argued with the prosecutor, and would not answer questions. Neither of these comments was improper. While it is improper for a prosecutor to "vouch for the credibility of his witnesses to the effect that he has some special knowledge concerning a witness' truthfulness," *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995), a prosecutor may argue from the facts issues of witness credibility. *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004). Taken in context, the prosecutor did not attempt to sway the jury through some special knowledge of credibility, but rather argued that the evidence created the reasonable inference that the victims had no motive to be untruthful and were, therefore, believable.

Lastly, defendant argues that his sentence was unconstitutionally enhanced on the basis of unproven allegations in violation of *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), causing his minimum sentence to exceed the sentencing guidelines. *Blakely* is inapplicable to Michigan's indeterminate sentencing scheme. *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004). Nonetheless, defense counsel expressly agreed at sentencing that the offense variables in question were properly scored at 100 points. "A defendant may not

waive objection to an issue before the trial court and then raise it as an error before this Court." *People v Fetterley*, 229 Mich App 511, 520; 583 NW2d 199 (1998). Waiver extinguishes any error. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

Affirmed.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot