STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 11, 2008
v	No. 277757 Saginaw Circuit Court
MARTEL RAMONE RILEY Defendant-Appellant.	LC No. 06-027795-FC

Before: Donofrio, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529, felonious assault, MCL 750.82, and resisting and obstructing an officer causing injury, MCL 750.81d(2). He was sentenced as a second habitual offender, MCL 769.10, to 81 months to 14 years' imprisonment on the armed robbery conviction and 2 to 6 years' imprisonment on both the felonious assault and the resisting and obstructing convictions, all to be served concurrently. Defendant appeals as of right. We affirm.

Defendant's conviction arises from an incident in which he drove away from a gas station without paying for gas after filling the tank of his vehicle, and as he made flight from the gas station he dragged a police officer across the parking lot with the vehicle, injuring the officer. The police officer had responded to the scene after station personnel called police regarding defendant's suspicious behavior, and the officer was leaning his body into defendant's vehicle in an attempt to gain control of defendant and turn off the ignition when the vehicle suddenly accelerated, pulling the officer along for the ride.

Defendant first argues on appeal that there was insufficient evidence to sustain the conviction for armed robbery, where there was a lack of evidence showing that defendant engaged in threatening conduct directed at the responding police officer and that defendant deliberately intended to place the officer in fear or to assault him.

We review claims of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). 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 that arise from such evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). 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).[1]

The armed robbery statute, MCL 750.529, provides in part:

> A person who engages in conduct proscribed under [MCL 750.530] and who in the course of engaging in that conduct, possesses a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon, or who represents orally or otherwise that he or she is in possession of a dangerous weapon, is guilty of a felony punishable by imprisonment for life or for any term of years. . . .

The general robbery statute, MCL 750.530, provides:

> (1) A person who, in the course of committing a larceny of any money or other property that may be the subject of larceny, uses force or violence against any person who is present, or who assaults or puts the person in fear, is guilty of a felony punishable by imprisonment for not more than 15 years.
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> (2) As used in this section, "in the course of committing a larceny" includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property.

In *People v Chambers*, 277 Mich App 1, 7-8; 742 NW2d 610 (2007), this Court, addressing the interplay between MCL 750.529 and 750.530, stated:

> The incorporation of MCL 750.530, the unarmed robbery statute, into the armed robbery statute . . . leads us to the conclusion that a prosecutor must now prove, in order to establish the elements of armed robbery, that (1) the defendant, in the course of committing a larceny of any money or other property that may be the subject of a larceny, used force or violence against any person who was present or assaulted or put the person in fear, and (2) the defendant, in the course of committing the larceny, . . . possessed a dangerous weapon . . . . These elements arise from a plain reading of the statutes when MCL 750.529 and MCL 750.530 are read in conjunction. [Footnotes omitted.]

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[1] These principles are equally applicable in the context of defendant's argument that the court erred in denying his motion for directed verdict. *People v Aldrich*, 246 Mich App 101, 122-123; 631 NW2d 67 (2001).

We initially note that, under MCL 750.529, defendant's motor vehicle, as used in this case, constituted a "dangerous weapon." An object that is generally not dangerous can be considered a dangerous weapon for purposes of MCL 750.529 when utilized in a dangerous manner. *People v Velasquez*, 189 Mich App 14, 17; 472 NW2d 289 (1991) ("The automobile, in our view, qualifies as a dangerous weapon under that standard."). Here, defendant's vehicle was used as a dangerous weapon when defendant hit the accelerator and the vehicle dragged the officer across the gas station's parking lot.

Further, the evidence clearly established that defendant used force and violence against a person present at the scene, the police officer, and that he assaulted the officer, all while defendant was in the course of committing a larceny, which includes the period of flight or attempted flight, where defendant drove away with a full tank of gasoline for which he did not pay. See *People v Passage*, 277 Mich App 175, 178; 743 NW2d 746 (2007) ("[T]he use of any force against a person during the course of committing a larceny, which includes the period of flight, is sufficient under the statute[, and] '[f]orce' is nothing more than the exertion of strength and physical power."). Contrary to defendant's claim, there was sufficient evidence that defendant engaged in threatening conduct directed at the officer, where defendant proceeded to accelerate the vehicle with the officer's body leaning inside the car and to then continue driving as the officer was dragged through the parking lot, struggling to free himself. Further, contrary to defendant's argument, there was sufficient evidence to show that defendant deliberately intended to place the officer in fear and to assault him with the vehicle, as well as sufficient evidence to establish that defendant deliberately intended to use force and violence against the officer to escape with the stolen property, i.e., the gas. See *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999)(actor's intent may be inferred from the facts and circumstances and minimal circumstantial evidence is sufficient to show a defendant's state of mind). In sum, viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence to sustain the guilty verdict relative to armed robbery.

Next, defendant argues that the prosecutor introduced inadmissible evidence and improperly referred to defendant as a "bad man." Defendant's argument relies on MRE 404(b)(1) and (2) and is based on elicited testimony that defendant had been required to take an anger management class as a condition of probation relative to a past offense, that defendant failed to complete the anger management class, and that defendant committed the crime of driving on a suspended license. Defendant bootstraps an ineffective assistance of counsel argument, given that defense counsel failed to object to the evidence and the reference to defendant as a "bad person."

The challenged testimony was elicited on cross-examination of defendant after defendant testified on direct examination that he panicked when the officer confronted him, worrying about the fact that he was on probation and that a probation violation would result in jail time. Defendant also testified on direct examination that he had a valid license at the time of the incident. Thus, defendant opened the door on matters concerning his probation and the status of his driver's license. See *People v Figgures*, 451 Mich 390, 399-400; 547 NW2d 673 (1996) (evidence introduced by the prosecutor was proper where it was in response to evidence and impressions raised by the defendant on direct examination); *People v Marrow*, 210 Mich App 455, 465-466; 534 NW2d 153 (1995), aff'd 453 Mich 903 (1996), overruled in part on other grounds by *People v Pasha*, 466 Mich 378; 645 NW2d 275 (2002) (reversal not warranted for

injection of other-acts evidence where the defendant opened the door to the entire line of questioning). Accordingly, reversal is not warranted.

Furthermore, given the strong evidence of guilt and the harmless nature of the challenged evidence and the brief reference to defendant as a "bad man,"[2] we cannot conclude that there existed plain error that affected defendant's substantial rights, nor can we find that defendant is actually innocent or that the integrity of the proceedings was compromised. *Carines*, *supra* at 763-764. Additionally, the challenged evidence was properly admitted and counsel was not required to raise futile objections. *People v Fike*, 228 Mich App 178, 182-183; 577 NW2d 903 (1998). Moreover, any assumed deficiency in defense counsel's performance did not result in the requisite prejudice for purposes of the ineffective assistance of counsel claim as there is no reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *People v Carbin,* 463 Mich 590, 599-600; 623 NW2d 884 (2001).

Affirmed.

/s/ Pat M. Donofrio
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald

[2] The trial court instructed the jury on the proper use of other-acts evidence and its responsibility to decide the case based on the facts alone. "It is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).