STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 4, 2010
v	No. 289074 Kent Circuit Court
FREDDIE LAMONT HARRIS, Defendant-Appellant.	LC No. 08-005781-FH

Before: OWENS, P.J., and SAWYER and O'CONNELL, JJ.

PER CURIAM.

After a jury trial, defendant Freddie Lamont Harris was convicted of one count of assault with intent to rob while unarmed, MCL 750.88, and one count of conspiracy to commit such assault, MCL 750.157a and 750.88. Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent terms of 6 to 30 years' imprisonment for each conviction, with 155 days' credit for time served. He appeals as of right. We affirm.

I. FACTS

At approximately 11:30 a.m. on May 22, 2008, the victim, a participant in a job-training program in Grand Rapids, disembarked at a bus stop near the corner of Hall Street and Division Avenue to go to the job-training center. Meanwhile, defendant and William Sadler were hanging out together and drinking alcohol near the bus stop. According to Sadler, they planned on snatching someone's purse, but they did not intend on harming anyone. As the victim walked from the bus stop to the job-training center, defendant grabbed her purse. Sadler then grabbed her jacket, ripping a button off her shirt in the process. Sadler testified at trial that when they attempted to take her purse, "[t]here was just a struggle . . . but nothing didn't happen." According to the victim, defendant and Sadler could not get her purse. When an unidentified passer-by interceded on the victim's behalf, defendant and Sadler ran away.

The victim went to the job-training center, where she informed the security manager of the incident. The security manager called the police, and then drove to the location where the incident occurred. The security manager noticed two individuals, who appeared to be intoxicated, walking toward the job-training center. He called the victim and asked her to identify the individuals. The victim stepped outside the entrance of the job-training center and told the security manager that the individuals walking toward the job-training center were the same individuals that had assaulted her. The security manager continued to follow defendant

and Sadler as they walked to a liquor store. When the police arrived, the security manager informed the police that defendant and Sadler had assaulted the victim, and defendant and Sadler were arrested.

II. DIRECTED VERDICT AND SUFFICIENCY OF THE EVIDENCE CLAIMS

First, defendant claims that the trial court erroneously denied his motion for directed verdict. Alternately, he argues that the evidence presented at trial was insufficient to sustain his convictions.

> When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt. [*People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).]

We also review a claim of insufficient evidence in a criminal trial de novo, *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002), again viewing the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could find beyond a reasonable doubt that the essential elements of the crime were established, *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). We are "required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). However, to establish that the evidence presented was sufficient to support defendant's conviction, "the prosecutor need not negate every reasonable theory consistent with innocence." *Id.* "The evidence is sufficient if the prosecution proves its theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant may provide." *People v Wolford*, 189 Mich App 478, 480; 473 NW2d 767 (1991).

The prosecutor need not present direct evidence linking defendant to the crime in order to provide sufficient evidence to support defendant's conviction: "[c]ircumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of the offense." *Id.* Further, a factfinder may infer defendant's intent from all the facts and circumstances provided. *Id.* "Questions of credibility are left to the trier of fact and will not be resolved anew by this Court." *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Furthermore, "[i]t 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." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

To establish a conviction of assault with intent to rob while unarmed, the prosecution must establish "(1) an assault with force and violence, (2) an intent to rob and steal, and (3) defendant being unarmed." *People v Chandler*, 201 Mich App 611, 614; 506 NW2d 882 (1993). Additionally, any person who conspires with one or more persons to commit a criminal offense is guilty of the crime of conspiracy. MCL 750.157a. On appeal, defendant claims that the prosecution failed to prove that an assault occurred. A simple criminal assault arises from "either an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery." *People v Johnson*, 407 Mich 196, 210; 284 NW2d 718 (1979) (internal quotations and citation omitted). "[I]t is impossible to commit a

battery without first committing an attempted-battery assault." *People Nickens*, 470 Mich 622, 628; 685 NW2d 657 (2004). A "battery" is "an intentional, uncontested and harmful or offensive touching of the person of another, or of something closely connected with the person." *People v Starks*, 473 Mich 227, 234; 701 NW2d 136 (2005) (internal quotations and citation omitted).

At trial, Sadler testified that he and defendant intended to snatch someone's purse. The victim testified that as she disembarked from the bus, defendant grabbed her purse and Sadler grabbed her jacket. When defendant and Sadler could not obtain her purse, they ran away. We conclude that the victim's testimony established that defendant committed an assault with force or violence: defendant either completed a battery or, at the very least, attempted to commit a battery or an unlawful act that placed the victim in reasonable apprehension of receiving an immediate battery. *Johnson*, 407 Mich at 210. "The credibility of witnesses and the weight accorded to evidence are questions for the jury, and any conflict in the evidence must be resolved in the prosecutor's favor." *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009). Viewing the evidence presented in a light most favorable to the prosecution, a rational trier of fact could, and did, find that all the essential elements of the charged offenses were established beyond a reasonable doubt. *Aldrich*, 246 Mich App at 122. Thus, the trial court properly denied defendant's motion for a directed verdict, and there was sufficient evidence to prove the assault element and to sustain both of defendant's convictions.

III. SENTENCING

Next, defendant complains that the trial court failed to consider "all mitigating evidence" in sentencing the defendant. In arguing this issue, defendant has failed to cite or identify any mitigating evidence that the trial court should have considered and did not. As the appellant, defendant bears the burden of furnishing the reviewing court with a record to verify the factual basis of any argument upon which reversal might be predicated. *People v Elston*, 462 Mich 751, 762; 614 NW2d 595 (2000). He has not done so here. Thus, this issue is abandoned. *People v Traylor*, 245 Mich App 460, 464; 628 NW2d 120 (2001) (this Court will not search for a factual basis to sustain or reject defendant's position). Nevertheless, we find that the trial court reviewed defendant's presentence investigation report (PSIR) and his sentence information report (SIR). There is no evidence to support defendant's argument, particularly if the mitigating evidence to which he alludes is his alleged strong family support and his substance abuse. See *People v Nunez*, 242 Mich App 610, 618; 619 NW2d 550 (2000).

Defendant also asserts that the trial court committed numerous errors with respect to the imposition of his sentences. These unpreserved allegations are not appealable because defendant's sentences are within the appropriate sentencing range and no scoring errors were committed or inaccurate information used in determining his sentences. *People v Kimble*, 470 Mich 305, 310-311; 684 NW2d 669 (2004). Notably, all defendant's allegations of sentencing error lack merit. After a review of the record, we have determined that none of the alleged sentencing errors require vacation of defendant's sentences or a remand for resentencing.

Affirmed.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Peter D. O'Connell