STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 17, 2010
v	No. 291053 Wayne Circuit Court
DEMOND SANDERS, Defendant-Appellant.	LC No. 08-011748-FC

Before: ZAHRA, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to rob and steal being armed, MCL 750.89, and conspiracy, MCL 750.157a, to commit both armed robbery, MCL 750.529, and possession with intent to deliver 1,000 or more grams of cocaine, MCL 333.7401(2)(a)(i). He was sentenced to 171 months to 22 years' imprisonment. He appeals as of right. We affirm.

I. BASIC FACTS AND PROCEEDINGS

In this case, the Romulus Police Department, in a reverse sting operation, enlisted a confidential informant (CI) to sell Joseph Boldizer and Brian Thomas a substantial amount of cocaine while under police surveillance. Defendant knew Thomas and drove Thomas and Boldizer to meet the CI in a parking lot in Westland to sample the cocaine. Defendant waited in the car while Boldizer and Thomas sampled the cocaine; they returned to the car and they left.

Several days later, defendant again drove Boldizer and Thomas toward the same location. Before reaching the parking lot, however, defendant stopped at a nearby party store where he made a phone call. Defendant then drove Boldizer and Thomas to the same parking lot. There, Boldizar and Thomas again exited the car, Thomas retrieved a black duffel bag from the trunk, and he and Boldizar walked to the CI's car. Police had provided the CI with approximately 3 kilograms of cocaine to sell in the sting. Boldizar sat in the passenger seat of the CI's car and Thomas sat in the back seat. At this time, a black SUV entered the parking lot and slowly approached the CI's car. The black SUV stopped and a passenger exited holding a small sub machine gun or Tech 9. He walked over the CI's car and pointed the Tech 9 at the CI. Meanwhile, Detective Larry Droege and other officers of the Romulus Police Department had been conducting surveillance of the CI. When Droege heard the Tech 9 fire, he exited his vehicle holding his service revolver. Droege ordered the subject to drop the Tech 9 but he raised

the weapon and Droege fired. A shootout ensued. During this shootout, Droege saw Thomas exit the vehicle holding a gun in one hand and the bag containing cocaine in the other hand. Police shot Thomas and the gun and bag containing cocaine were recovered. Droege then saw defendant drive away.

City of Westland Police Department Officer Burke Lange testified that he interviewed defendant later that day, and that defendant signed an "advice of rights" form in which defendant acknowledged being informed of his *Miranda*[1] rights. Defendant also executed a statement in which Lange wrote questions and defendant provided handwritten responses. In the statement, defendant admitted that he participated in the robbery and that his cut would have been $1,000. He also admitted that, before the robbery, he called the men in the black SUV and told them where and when the robbery was to occur. The trial court found defendant guilty of assault with intent to rob and steal being armed, conspiracy to commit armed robbery and conspiracy to possess with intent to deliver 1,000 or more grams of cocaine. This appeal ensued.

II. INVOLUNTARY CONFESSION

Defendant argues that police coerced him to confess by threatening to charge him with murdering Thomas. He also asserts that police unjustifiably searched his mother's home and threatened potential charges against his girlfriend.

> [The Court of Appeals] review of the issue of voluntariness must be independent of that of the trial court. However, we will affirm the trial court's decision unless we are left with a definite and firm conviction that a mistake has been made. Further, if resolution of a disputed factual question turns on the credibility of witnesses or the weight of the evidence, we will defer to the trial court, which had a superior opportunity to evaluate these matters. [*People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000), quoting *People v Sexton (On Remand)*, 236 Mich App 525, 543; 601 NW2d 399 (1999) (Murphy, J. dissenting) (internal citations omitted).]

In determining voluntariness, the court should consider all the circumstances, including: the duration of the defendant's detention and questioning; the age, education, intelligence and experience of the defendant; whether there was unnecessary delay of arraignment; the defendant's mental and physical state; whether the defendant was threatened or abused; and any promises of leniency. *People v Sexton*, 458 Mich 43, 66; 580 NW2d 404 (1998). Coercion can be physical or psychological. *People v DeLisle*, 183 Mich App 713, 721; 455 NW2d 401 (1990).

Here, defendant was arrested at 10:30 p.m., read his constitutional rights at 11:55 p.m., and had confessed by 1:44 a.m., all of which is in a relatively short duration. Notably, "[b]efore [defendant] made any incriminating statements, he received partial warnings of his constitutional rights; this is, of course, a circumstance quite relevant to a finding of voluntariness." *Frazier v Cupp*, 394 US 731, 89 S Ct 1420 (1969), citing *Davis v North Carolina*, 384 US 737, 740-741,

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

86 S Ct 1761, 16 L Ed 2d 895 (1966). Further, the record also reflects that defendant is a literate adult with a prior criminal record and experience with criminal procedure. There is no indication that defendant was in physical discomfort or that he was in any way impaired.

Defendant only claims that Officer Lange threatened charges against him for murder, threatened to charge his girlfriend as an accomplice, and harassed his mother if he did not execute the confession. Lange expressly denied making any threats. The only support defendant presents beyond his testimony is a booking form indicating he was being held for "willful homicide." However, Lange expressly denied that he showed the form to defendant and Lange testified that defendant would not have been given a copy of the form. He also explained that the form likely indicated "willful homicide" simply because police had initially responded to a "homicide shooting," and had not altered the title until it was investigated. Lange also testified that he had previously spoken with defendant's cousin, the owner of the car defendant had driven, who informed Lange that defendant admitted his involvement in the robbery. Lange testified that he only relied on statements by defendant's cousin to confront defendant.

Here, the trial court did not err in rejecting defendant's claim that his confession was involuntary. The trial court specifically found Officer Lange to be a credible witness. The prosecutor, defense counsel and the trial court all examined Lange. Indeed, the trial court asked Lange numerous questions. At no point is there any contradiction or inconsistency in Lange's testimony. On the other hand, defendant did not even challenge Lange's testimony that defendant made incriminatory statements to his cousin. Here, we cannot conclude that the trial court erred in concluding that defendant confessed to minimize his role in the robbery, and not because of any threats made by Lange.

III. SUFFICIENCY OF THE EVIDENCE

A challenge to the sufficiency of the evidence is reviewed de novo and in a light most favorable to the prosecution to determine "whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). "All conflicts with regard to the evidence must be resolved in favor of the prosecution. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005) (internal citations omitted),. Resolution of this issue also involves a question of statutory interpretation, which is also reviewed de novo. *Cline, supra*, at 642.

Defendant specifically argues that "[h]e drove, but claims he did not know what was going to occur." Further, that defendant "did not get out of the vehicle on either occasion," and never had any contact with any of the participants not in his vehicle." In short, defendant's argument is simply that without the confession, "there is no evidence to establish that he simply wasn't giving someone a ride on a couple of occasions." The trial court properly rejected this claim as "completely preposterous." We agree.

A person may be a party to a continuing conspiracy by knowingly cooperating to further the object of the conspiracy. *People v Lowery*, 274 Mich App 684, 693; 736 NW2d 586 (2007). As an aider and abettor, the prosecution must show that the defendant intended the commission of the crime or had knowledge that the principle intended its commission at the time the

defendant gave aid or encouragement. *People v Jones (On Rehearing)*, 201 Mich App 449, 451; 506 NW2d 542 (1993). On cross-examination, defendant admitted that the phone he had in his possession when arrested received a text message from Thomas at 7:44 a.m. on the day of the crime stating in part, "you need to get a ride and get Bert ready," and "[i]t's on at one o'clock." Defendant also claimed not to know Boldizar but his phone history reflected eight calls between them. Moreover, despite defendant's protestation of ignorance, a reasonable finder of fact could readily conclude that defendant must have known that criminal activity was afoot and that he provided encouragement. Thus, a reasonable finder of fact could readily conclude that defendant had knowledge of the instant crimes, agreed to participate in their commission, and attempted to assist in their commission.

In a related claim, defendant maintains that the jury's verdict was against the great weight of the evidence presented at trial. Because defendant failed to preserve this issue for appeal by moving timely for a new trial below, we decline to address it. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997), citing MCR 2.611(A)(1)(e) and *People v Dukes*, 189 Mich App 262, 264; 471 NW2d 651 (1991). Moreover, defendant's argument simply restates his claim that there was insufficient evidence, which we previously addressed and rejected.

IV. AUTHORITY OF POLICE OFFICERS

Defendant last argues that Romulus police officers lacked the authority to operate in Westland. He relies on MCL 764.2a, which provides:

> A peace officer of a county, city, village, township, or university of this state may exercise the authority and powers of a peace officer outside the geographical boundaries of the officer 's county, city, village, township, or university under any of the following circumstances:
>
> (a) If the officer is enforcing the laws of this state in conjunction with the Michigan state police.
>
> (b) If the officer is enforcing the laws of this state in conjunction with a peace officer of any other county, city, village, township, or university in which the officer may be.
>
> (c) If the officer has witnessed an individual violate any of the following within the geographical boundaries of the officer's county, city, village, township, or university and immediately pursues the individual outside of the geographical boundaries of the officer's county, city, village, township, or university:

Defendant specifically claims that Romulus police only informed Westland police of the sting minutes before the robbery, and thus, Romulus police was not working in conjunction with Westland police. However, defendant fails to appreciate that the purpose of MCL 764.2a "'is not to protect the rights of criminal defendants, but rather to protect the rights and autonomy of local governments.'" *People v McCrady*, 213 Mich App 474, 480-481; 540 NW2d 718 (1995), quoting *People v Clark*, 181 Mich App 577, 581; 450 NW2d 75 (1989). Thus, notwithstanding noncompliance with MCL 764.2a, defendant is not entitled to a dismissal of charges. *People v Meyer*, 424 Mich 143, 156-157; 379 NW2d 59 (1985). Defendant also argues that MCL 764.2a

should be interpreted so that "unlawful actions by the police . . . have repercussions," a decision of the Supreme Court is binding on the Court of Appeals until the Supreme Court overrules itself. *Hauser v Reilly*, 212 Mich App 184, 187; 536 NW2d 865 (1995).

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald