

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LOUIS EDWARD JAMISON-LAWS,

Defendant-Appellant.

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UNPUBLISHED

March 1, 2011

No. 295356

Oakland Circuit Court

LC No. 2009-225332-FC

Before: CAVANAGH, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

After a jury trial, defendant and codefendant were convicted of armed robbery, MCL 750.529. Defendant was sentenced as an habitual offender, second offense, MCL 769.13, to 8 to 20 years' imprisonment for armed robbery. Defendant appeals as of right. We affirm.

Defendant first argues there was insufficient evidence to prove beyond a reasonable doubt that he committed an armed robbery. We disagree.

A de novo standard of review is applied to sufficiency of evidence claims. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When a court reviews a sufficiency of the evidence claim, it "must view the evidence in a light most favorable to the prosecution and 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 Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). "The standard of review is deferential: a reviewing court is 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). "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).

"The elements of armed robbery are: (1) an assault, (2) a felonious taking of property from the victim's person or presence, and (3) the defendant must be armed with a weapon described in the statute." *People v Johnson*, 206 Mich App 122, 123; 520 NW2d 672 (1994).

Defendant argues there was insufficient evidence to prove he was one of the men who committed the armed robbery because none of the witnesses identified him as an assailant. Defendant's argument is without merit because eyewitness identification evidence is not required to prove an offense. The elements of a crime may be proven by circumstantial evidence and the

reasonable inferences drawn from it. *Wilkens*, 267 Mich App at 738. Defendant also argues the jury could have drawn different inferences from the evidence. However, this Court views the evidence favorably to the prosecution, *Wolfe*, 440 Mich at 515, and makes credibility choices in support of the jury verdict, *Nowack*, 462 Mich at 400. Viewed in this manner, the evidence was sufficient to convict defendant of armed robbery.

The testimony at trial established that two men dressed like women wearing wigs used mace, a BB gun, and a plastic revolver replica to assault the victim and rob him of \$9,900.00 in one hundred dollar bills. Shortly thereafter, police discovered defendant in an apartment in the building next to the building where the assault occurred. Defendant did not respond when the police announced their presence in the apartment, and when they found defendant, he was hiding in the closet behind a furnace panel in only his underwear. The police found \$9,900 in one hundred dollar bills on top of the furnace in the closet where defendant was hiding. In addition, police found black Nike tennis shoes that matched the shoeprint on the front door of the apartment, which was kicked in by someone. Defendant's DNA was found in a wig and head wrap discovered by police at the scene of the crime. The BB gun recovered by police at the crime scene had been in defendant's bedroom before the crime occurred.

Furthermore, codefendant was found in the apartment with defendant. He was wearing women's clothing. Codefendant's telephone number was the telephone number listed on the Craigslist advertisement, and he had a canister of Mace like the one police found that was used in the assault, and he owned the BB gun. Codefendant confessed to their cousin that "*they* had robbed someone." In summary, viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence for a jury to find beyond a reasonable doubt that defendant committed an armed robbery.

Defendant next argues that he should be entitled to resentencing because offense variables (OV) 4, MCL 777.34 (psychological injury to victim), and 19, MCL 777.49 (security threat to penal institution or court or interference with administration of justice), were improperly scored. Defendant contends OV 4 and OV 19 should have each been scored zero points because the evidence did not support scores of ten points. We disagree.

The interpretation and application of statutory sentencing guidelines involve questions of law and are reviewed de novo. *People v Francisco*, 474 Mich 82, 85; 711 NW2d 44 (2006). This Court reviews OV scoring for an abuse of discretion to determine whether the evidence supports a particular score. *People v Apgar*, 264 Mich App 321, 329; 690 NW2d 312 (2004). "Scoring decisions for which there is any evidence in support will be upheld." *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996).

OV 4 should be scored ten points if "serious psychological injury requiring professional treatment occurred to a victim." MCL 777.34(1)(a). MCL 777.34(2) provides, "[T]he fact that treatment has not been sought is not conclusive." OV 4 does not require the victim to actually receive psychological treatment. *Apgar*, 264 Mich at 330. Evidence of fear may be sufficient to support an OV 4 score of ten points. *Id.*

If a scoring error does not alter the appropriate guidelines range, then the defendant is not entitled to resentencing. *Francisco*, 474 Mich at 89. In this case, resentencing would only be

required if both OV 4 and 19 were improperly scored because one OV scoring error would not change the applicable guidelines range.

There was sufficient evidence to score OV 4 ten points. The court based the score on the victim's testimony and demeanor in court and the victim's statement in the Presentence Investigation Report (PSIR). The trial court noted that the victim was tearful and broke down while testifying. The victim's PSIR statement indicated, "he is still terrified from what occurred in the offense. He has difficulty in trusting people and is always looking over his shoulder." Additionally, there was trial testimony that after the armed robbery occurred the victim appeared very scared, "completely hysterical," distraught, and in a lot of pain and discomfort. The trial court did not abuse its discretion because the evidence supported an OV 4 score of ten points.

Because the OV 4 score of ten points was not an abuse of discretion, it is unnecessary to determine whether OV 19 was properly scored ten points. Any error in the scoring of OV 19 would not alter the appropriate guidelines range. Nevertheless, pursuant to *People v Barbee*, 470 Mich 283, 288; 681 NW2d 348 (2004) and *People v Ericksen*, 288 Mich App 192; \_\_\_ NW2d \_\_\_ (2010), we would conclude that OV 19 was properly scored.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Cynthia Diane Stephens  
/s/ Amy Ronayne Krause