

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 12, 2017

v

JOSEPH LEE PARMENTER,

Defendant-Appellant.

No. 334299
Wayne Circuit Court
LC No. 15-009190-01-FH

Before: GLEICHER, P.J., and GADOLA and O'BRIEN, JJ.

PER CURIAM.

Following a bench trial, the trial court convicted defendant of malicious destruction of a bridge, MCL 750.379. Defendant challenges the sufficiency of the evidence supporting his conviction as well as the presentation of an unendorsed prosecution witness. We discern no error and affirm.

I. BACKGROUND

In the early afternoon of September 18, 2015, Marshall and Crystal White were driving over a newly constructed bridge on Fort Street in Detroit. They noticed defendant kneeling on the sidewalk, spraying black paint on the bridge wall. Defendant was wearing a turquoise basketball jersey and zebra print pants and was carrying a backpack. The Whites confronted defendant and he colorfully told them to mind their own business. Defendant walked away, jumped over a guardrail and began walking through a large field where a neighborhood had been razed to make room for a Marathon Oil facility.

The Whites tracked down the head of security at the nearby Marathon plant, Thomas Gren. Gren's staff contacted the police. The Whites and Gren watched defendant continue to cross the large empty field until the police arrived. The vacant space and defendant's fashion choices made him easy to spot. Two patrol officers found defendant without difficulty and placed him under arrest. The officers found no paint supplies on defendant and his hands and clothing were clean. The arresting officers conducted no further investigation, such as attempting to locate discarded paint cans or gloves.

The following day, Detroit Police Officer Aaron Yopp sat in on defendant's interrogation. He then travelled to the site of the graffiti damage. Yopp discovered black bubble letters spelling out "Kolor" and "TCK" and a picture of a skull with numbers on it. Yopp

testified that “TCK” stands for “This Crew Kills,” a “graffiti crew that operates within southwest Detroit.” The paint was fresh as it still had luster.

II. SUFFICIENCY OF THE EVIDENCE

Defendant first argues that the prosecution presented insufficient evidence to support his conviction. Specifically, defendant contends that the prosecution failed to establish the necessary specific intent to commit the crime. He further asserts that the court relied too heavily on the witness statements, ignoring the lack of physical evidence.

We review de novo challenges to the sufficiency of the evidence, viewing the evidence in the “light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Lanzo Const Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). In doing so, we may not interfere with the trial court’s assessment of witness credibility or weighing of the evidence, *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008), unless the witness testimony has been so impeached as to deprive it “of all probative value [such] that the jury could not believe it,” *People v Lemmon*, 456 Mich 625, 643; 576 NW2d 129 (1998). We are also permitted to overrule the factfinder’s judgment “if the testimony contradicts indisputable physical facts or laws” and “where testimony is patently incredible or defies physical realities.” *Id.* (quotation marks and citations omitted).

The court convicted defendant of malicious destruction of property (MDOP), specifically a bridge, under MCL 750.379, which provides:

Any person who shall wilfully and maliciously break down, injure, remove or destroy any public or toll bridge, or any railroad, or any lock in any dam, or any lock, culvert or embankment of any canal, or who shall wilfully and maliciously make any aperture or breach in any such embankment, with intent to destroy or injure the same, shall be guilty of a felony.

MDOP is a specific intent crime. See *People v Culp*, 108 Mich App 452, 456; 310 NW2d 421 (1981); see also M Crim JI 32.3. The prosecutor must show that defendant damaged the property, and that he did so “knowing that it was wrong and with the intent to damage or destroy the property.” M Crim JI 32.3.

In this case, two witnesses saw defendant spray-painting the bridge. Both Marshall and Crystal White saw defendant with a can of spray paint in his hand in the act of painting on the bridge wall. The crime occurred in broad daylight. The witnesses kept defendant in their sights almost constantly until the police arrived. This was an easy task as defendant escaped through a large open field, wearing a turquoise shirt and zebra-print pants. The Whites and Gren watched as the police officers confronted defendant, the same man they had been watching.

It is true that the police found no paint cans on defendant’s person or paint spatters on his hands or clothes. However, defendant could have discarded paint cans and gloves anywhere along his path. The witness testimony was not so incredible that it defied physical reality or indisputable physical facts. We therefore have no grounds to interfere with the court’s decision to credit the eye-witness testimony.

Defendant also contends that the trial court failed to explicitly find that he had the specific intent to injure or to harm the bridge. MCR 2.517(1) requires that “[i]n actions tried on the facts without a jury . . . the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.” “Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of the facts.” MCR 2.517(2).

The trial court articulated its findings of fact and then summarized, “Based on all the testimony I’ve heard here, I’m convinced beyond a reasonable doubt that this defendant was the one who was spray painting the bridge, and, therefore, I find him guilty of malicious destruction of a bridge.” The trial court expressly resolved the only contested issue in this case: whether defendant was the man seen spray-painting the bridge, or whether this was a case of mistaken identity. The court did not expressly resolve the issue of specific intent. However, the act of spray-painting graffiti onto a bridge gives rise to a reasonable inference that the actor had the specific intent to maliciously injure or harm the property. And the court found defendant was “guilty of *malicious* destruction of a bridge,” inferring its finding on the intent issue. Defendant is therefore not entitled to relief.

III. WITNESS SUBSTITUTION

Finally, defendant contends that the trial court abused its discretion by allowing the prosecution to present an unendorsed witness at trial in violation of MCL 767.40a. We need not consider this issue. The subject witness, Joseph Bartus, testified on the Michigan Department of Transportation’s behalf and took the place of the previously endorsed witness, Mia Silver. Bartus testified regarding the cost to repair the damage caused by the spray paint. Although defendant contends that Bartus’s testimony artificially inflated the cost of the repairs, defendant later participated in a separate restitution hearing and then stipulated to a restitution order. Defendant waived his challenge, extinguishing any error. See *People v Kowalski*, 489 Mich 488, 502-503; 803 NW2d 200 (2011). And although defendant contends that the improper presentation of this witness merits reversal of his conviction, Bartus presented no testimony relative to defendant’s guilt or innocence. Accordingly, his claim completely lacks merit.

We affirm.

/s/ Elizabeth L. Gleicher
/s/ Michael F. Gadola
/s/ Colleen A. O'Brien