

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
November 17, 2011

v

JAMES H. BREWER,

No. 299460
Wayne Circuit Court
LC No. 10-002559-FC

Defendant-Appellant.

Before: SERVITTO, P.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right his bench convictions of unlawful imprisonment, MCL 750.349b, felon in possession of a firearm, MCL 750.224f, possession of a short-barreled shotgun, MCL 750.224b, felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. We affirm.

On appeal, defendant argues that there was insufficient evidence for a rational trier of fact to convict him of unlawful imprisonment. He claims that, because the victim—who was paralyzed from the waist down—testified that defendant told her she did not have to “fall out of the car” and that he would get her wheelchair out of the trunk so that she could leave, the evidence showed that the victim was restrained because of her physical condition, not by defendant’s forceful conduct. That is, the evidence presented by the prosecution established that it was not defendant’s intention to restrain the victim; on the contrary, defendant was going to help the victim leave her car. We disagree.

We review de novo a challenge to the sufficiency of the evidence. *People v Phelps*, 288 Mich App 123, 131; 791 NW2d 732 (2010). The evidence is construed in a light most favorable to the prosecution to determine whether it was sufficient for a rational trier of fact to find the essential elements of the crime were proved beyond a reasonable doubt. *Id.* at 131-132; *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). Circumstantial evidence and reasonable inferences arising from the evidence can establish the elements of a crime. *People v Railer*, 288 Mich App 213, 217; 792 NW2d 776 (2010).

MCL 750.349b provides:

(1) A person commits the crime of unlawful imprisonment if he or she knowingly restrains another person under any of the following circumstances:

- (a) The person is restrained by means of a weapon or dangerous instrument.
- (b) The restrained person was secretly confined.
- (c) The person was restrained to facilitate the commission of another felony or to facilitate flight after commission of another felony.

And MCL 750.349b(3)(a) defines “restrain” as follows:

to forcibly restrict a person’s movements or to forcibly confine the person so as to interfere with that person’s liberty without that person’s consent or without lawful authority. The restraint does not have to exist for any particular length of time and may be related or incidental to the commission of other criminal acts.

In this case, sufficient evidence existed for a rational trier of fact to convict defendant of unlawful imprisonment. The victim testified that defendant entered her car, without her consent, and pointed a gun at her continuously for about 15 minutes. While this was happening, she felt “paranoid,” thought she “was about to die,” and did not feel free to leave. And when the victim’s nephew, Jimmy, approached the car, defendant showed Jimmy the gun and made a gesture that was understood to mean that Jimmy should go away and not try anything. Although defendant testified that the victim invited him into her car, the issue of witness credibility is for the trier of fact. See *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). Further, both defendant and the victim testified that defendant was carrying a gun and that defendant did not offer to get the victim’s wheelchair out of the trunk in order for her to leave until the end of their interaction.

In summary, considering the evidence and reasonable inferences arising from the evidence, the trier of fact could conclude that defendant knowingly restrained the victim by means of a weapon, MCL 750.349b(1)(a), and her liberty to exit the car was forcibly restricted during the time period. Therefore, the evidence was sufficient for a rational trier of fact to find the essential elements of the crime of unlawful imprisonment proved beyond a reasonable doubt. See *Phelps*, 288 Mich App at 131-132; *Hawkins*, 245 Mich App at 457.

Affirmed.

/s/ Deborah A. Servitto
/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens