

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
December 17, 2013

v

KHAALIS HENRY-LOUIS MITCHELL,
Defendant-Appellant.

No. 308577
Wayne Circuit Court
LC No. 11-004854-FH

Before: FORT HOOD, P.J., and SAAD and BORRELLO, JJ.

PER CURIAM.

Defendant appeals the trial court’s order that convicted him of attending a dogfight under MCL 750.49(2)(f), and sentenced him to three years’ probation as a third habitual offender pursuant to MCL 769.12. For the reasons set forth below, we affirm.

Defendant argues that the trial court improperly denied his motion for a directed verdict and improperly convicted him because there was insufficient evidence to prove he was a party to or caused the dogfight. These arguments are beside the point because he was charged and properly convicted for attending a dogfight. “Claims of insufficient evidence are reviewed de novo.” *People v Kloosterman*, 296 Mich App 636, 639; 823 NW2d 134 (2012). “A court reviewing the sufficiency of the evidence must view the evidence in the light most favorable to the prosecution and determine whether the evidence was sufficient to allow any rational trier of fact to find guilt beyond a reasonable doubt.” *Id.* Similarly, “[i]n assessing a motion for a directed verdict of acquittal, a trial court must consider the evidence presented by the prosecution to the time the motion is made and in a light most favorable to the prosecution, and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Riley (After Remand)*, 468 Mich 135, 139-140; 659 NW2d 611 (2003).

The prosecution may use circumstantial evidence and reasonable inferences to prove the elements of the charged crime. *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010). “[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). In order “to establish that the evidence presented was sufficient to support the defendant’s conviction, the prosecutor need not negate every reasonable theory consistent with

innocence.” *People v Kissner*, 292 Mich App 526, 534; 808 NW2d 522 (2011) (internal quotation marks omitted).

MCL 750.49(2), the statute at issue in this case, provides in relevant part:

(2) A person shall not knowingly do *any* of the following:

(a) Own, possess, use, buy, sell, offer to buy or sell, import, or export an animal for fighting or baiting, or as a target to be shot at as a test of skill in marksmanship.

(b) Be a party to or cause the fighting, baiting, or shooting of an animal as described in subdivision (a).

(c) Rent or otherwise obtain the use of a building, shed, room, yard, ground, or premises for fighting, baiting, or shooting an animal as described in subdivision (a).

(d) Permit the use of a building, shed, room, yard, ground, or premises belonging to him or her or under his or her control for any of the purposes described in this section.

(e) Organize, promote, or collect money for the fighting, baiting, or shooting of an animal as described in subdivisions (a) to (d).

(f) Be present at a building, shed, room, yard, ground, or premises where preparations are being made for an exhibition described in subdivisions (a) to (d), or be present at the exhibition, knowing that an exhibition is taking place or about to take place. MCL 750.49(2) (emphasis added).

Accordingly, a person violates MCL 750.49(2)(f) if he (1) is present at a dogfighting exhibition and (2) knows that a dogfighting exhibition is taking place.

Under the plain language of the statute, the prosecution did not need to prove that defendant was a party to or caused the dogfight, but only that defendant was “present at the [dogfight], knowing that a [dogfight] is taking place or about to take place.” MCL 750.49(2)(f).

Defendant correctly states that the prosecution did not present any evidence that he was a party to or caused the dogfight. But defendant was charged and convicted pursuant to MCL 750.49(2)(f). The felony information lists the charge as “ANIMALS-ATTENDING FIGHT” and cites MCL 750.49(2), noting in brackets the Prosecuting Attorneys Coordinating Council (PACC) code 750.49-B. The order of conviction and sentence lists the offense as attending an animal fight, and lists “750.49-B” under the heading PACC codes. Finally, the trial court indicated that it convicted defendant of attending a dogfight pursuant to MCL 750.49(2)(f). The

language in MCL 750.49(2)(f) is consistent with a charge of attending an animal fight. Defendant apparently confuses the PACC codes with the MCL citations.¹

Defendant's other assertion, that his conviction was against the great weight of evidence, is not valid. "We review unpreserved claims that the verdict was against the great weight of the evidence for plain error affecting the defendant's substantial rights." *People v Brantley*, 296 Mich App 546, 553; 823 NW2d 290 (2012). "A new trial based upon the weight of the evidence should be granted only where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result." *Id.* (citations and quotation marks omitted).

The evidence in this case supports the verdict. The testimony from both the prosecution and defense witnesses established that defendant violated MCL 750.49(2)(f). Codefendant, Orlando Eugene Stevens, testified that he and defendant entered the garage, and that they both were inside for about five minutes. The police officers present at the scene testified that, with the exception of one man who was arrested after walking out of the garage, the people arrested at the scene were all inside the garage when the officers arrived. Defendant was arrested at the scene and he knew there was a dogfight taking place. Further, Stevens and the police officers testified that anyone inside the garage would have known that a dogfight was taking place.

Despite this evidence, defendant unconvincingly argues the trial court's findings did not resolve all the questions of fact, and did not apply the facts to the elements of the charged offense. "[W]hen sitting as the trier of fact, the trial court is required to place its findings of fact and conclusions of law on the record or in a written opinion." *People v Henry*, 248 Mich App 313, 321; 639 NW2d 285 (2001). "If the trial court was aware of the issues in the case and correctly applied the law to the facts, its findings are sufficient." *People v Lanzo Const Co*, 272 Mich App 470, 479; 726 NW2d 746 (2006).

Here, the trial court determined that all the witnesses were credible. This determination does not suggest that the prosecution failed to prove its case beyond a reasonable doubt. In fact, the witnesses' credibility might have strengthened the prosecution's case—not defendant's. For instance, Stevens admitted that defendant was present at the dogfight pursuant to MCL 750.49(2)(f). The trial court also made specific findings regarding the *mens rea* element of the statute. "A strict-liability crime is one for which the prosecutor need only prove that the defendant performed the act, regardless of intent or knowledge." *People v Adams*, 262 Mich App 89, 91; 683 NW2d 729 (2004). MCL 750.49(2)(f) specifies that a defendant must have been knowingly present at the exhibition where he knows that a dogfight is taking place or about to take place. The trial court discussed the knowledge element of the crime, and found that defendant was present and knew that the dogfight was taking place in the garage.

¹ The PACC code for dogfighting is 750.49-B.

The trial court's findings of fact and conclusions of law were properly related to the crime charged. Defendant was charged and convicted pursuant to MCL 750.49(2)(f).

Affirmed.

/s/ Karen M. Fort Hood

/s/ Henry William Saad

/s/ Stephen L. Borrello