

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY BRIAN SASSE,

Defendant-Appellant.

UNPUBLISHED

May 23, 2013

No. 310928

Midland Circuit Court

LC No. 11-004796-FH

Before: HOEKSTRA, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of three counts of uttering and publishing, MCL 750.249. Defendant was sentenced as a fourth-offense habitual offender, MCL 769.12, to three to 15 years' imprisonment for each count. Because we conclude that there was sufficient evidence to support defendant's conviction and because defendant waived his claim of sentencing error, we affirm.

In January 2011, defendant gave two checks to his mother and one to his brother to cash on his behalf. Defendant testified that he gave his mother and brother checks written in their names to cash for him because he did not have a checking account. Defendant claimed to have received the checks from "Steve" and "Joan" for doing some automotive work. However, the victim, Joan Wolansky, testified that the checks were in her purse that was stolen, and that she had not authorized the checks to be drawn. Defendant denied stealing the checks or knowing that they were fraudulent.

On appeal, defendant first argues that there was insufficient evidence presented to establish beyond a reasonable doubt that he knew the checks were false and that he had the intent to defraud the victim. We disagree. We review sufficiency of the evidence issues de novo, examining the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that every essential element was proven beyond a reasonable doubt. *People v Ericksen*, 288 Mich App 192, 195-196; 793 NW2d 120 (2010). We "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).

To establish a defendant has committed uttering and publishing the prosecutor must prove the following elements: "(1) knowledge on the part of the accused that the instrument was false; (2) an intent to defraud; and (3) presentation of the forged instrument for payment."

People v Johnson-El, ___ Mich App ___; ___ NW2d ___ (Docket No. 306880, issued March 7, 2013), slip op at 2 (internal quotation marks and citation omitted). Intent is inherently difficult to prove; therefore, minimal circumstantial evidence is required to establish a defendant's intent. *People v Cameron*, 291 Mich App 599, 615; 806 NW2d 371 (2011). Intent can be inferred from the facts and circumstances of a case, *People v Kissner*, 292 Mich App 526, 534; 808 NW2d 522 (2011), including a defendant's acts, *Cameron*, 291 Mich App at 615. We defer to a jury's credibility determinations. *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009).

Wolansky and her fiancé, Neil Davis, testified that the signature on the checks was not Wolansky's. Wolansky testified that she had never met defendant, his mother, or his brother, nor did she owe any of them money for automotive repairs. Davis also testified that he did not know defendant, his mother, or his brother, and did not owe any of them money. Wolansky testified that her purse had been stolen and her checkbook was in her purse. The jury could have concluded from this testimony that defendant acquired Wolansky's checkbook and, without her permission, wrote the checks. When defendant asked his mother and brother to cash the checks, the intent to defraud was established. *People v Knowles*, 256 Mich App 53, 58; 662 NW2d 824 (2003), overruled on other grounds in *People v Melton*, 271 Mich App 590; 722 NW2d 698 (2006), superseded by statute on other grounds.¹

Defendant also argues that the trial court erred in scoring offense variable (OV) 13 at ten points because there was a single transaction and not a pattern of felonious activity. However, during the sentencing hearing, defense counsel conceded that OV 13 should be scored and that defendant's minimum guidelines range is ten to 46 months. Accordingly, we decline to address defendant's argument on appeal because defendant waived the issue by specifically agreeing to the assessment of ten points for OV 13. See *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder

¹ The prosecutor also presented evidence that defendant asked his ex-girlfriend to testify falsely on his behalf. Further, defendant admitted that he solicited this false testimony. Moreover, the testimony defendant asked his ex-girlfriend to give was inconsistent with his trial testimony. Both of these circumstances undermine defendant's credibility.