

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 26, 2013

v

DEANGELO WILLIAMS,

Defendant-Appellant.

No. 312212
Wayne Circuit Court
LC No. 12-003364-FC

Before: BOONSTRA, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

Defendant, Deangelo Williams, appeals as of right his jury-trial convictions of armed robbery, MCL 750.529, and carjacking, MCL 750.529a. The trial court sentenced defendant to concurrent sentences of 6 to 20 years' imprisonment for the armed-robbery conviction and five years' probation for the carjacking conviction. We affirm.

This case arises out of defendant's role in the November 29, 2011 robbery and carjacking of 76-year-old Lovell Nevitt, which was planned by Nevitt's granddaughter, Marcia Graham. Nevitt testified at trial that after he and his granddaughter ran an errand, she asked him to drive her to a certain destination, where he was then robbed and carjacked. The incident involved one man getting into the backseat of the car and holding a knife to Nevitt's neck while another man stood outside the passenger-side door. The man in the backseat said that he knew Nevitt had two wallets, and he demanded both, along with Nevitt's cellular telephone, a water pump that Nevitt had just purchased, and the receipt. The man then choked Nevitt to the point that he passed out. After Nevitt came to, the man in the back seat ordered Nevitt to get out of the car. Dizzy and weak, Nevitt got out of the car, fell, and dragged himself to the curb. Nevitt testified that "they" drove off in the car but later clarified that he was not sure if the man standing outside the passenger door, who was gone after the incident, had in fact gotten into the car.

Defendant argues that the prosecution failed to produce sufficient evidence for the element of identity to link him to the crimes as either a principal actor or an aider and abettor because the trial testimony implicating him was neither reliable nor credible. We disagree.

"This Court reviews de novo a claim of insufficient evidence in a criminal trial." *People v Kissner*, 292 Mich App 526, 533; 808 NW2d 522 (2011). In determining whether sufficient evidence was presented at trial to sustain a defendant's conviction, this Court must consider the "evidence in the light most favorable to the prosecutor" and determine whether a rational trier of

fact could have found the defendant guilty beyond a reasonable doubt. *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010).

The elements of armed robbery are:

(1) the defendant, in the course of committing a larceny of any money or other property that may be the subject of a larceny, used force or violence against any person who was present or assaulted or put the person in fear, and (2) the defendant, in the course of committing the larceny, either possessed a dangerous weapon, possessed an article used or fashioned in a manner to lead any person present to reasonably believe that the article was a dangerous weapon, or represented orally or otherwise that he or she was in possession of a dangerous weapon. [*People v Chambers*, 277 Mich App 1, 7; 742 NW2d 610 (2007) (footnote omitted).]

To satisfy its burden for carjacking, the prosecution must prove:

(1) that the defendant took a motor vehicle from another person, (2) that the defendant did so in the presence of that person, a passenger, or any other person in lawful possession of the motor vehicle, and (3) that the defendant did so either by force or violence, by threat of force or violence, or by putting the other person in fear. [*People v Davenport*, 230 Mich App 577, 579; 583 NW2d 919 (1998).]

“[I]dentity is an element of every offense.” *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008), citing *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976).

Defendant contends that the testimony of Lovell Nevitt and Marcia Graham did not credibly or reliably implicate him, and thus, the prosecution did not prove this element beyond a reasonable doubt. Defendant’s argument relies on the fact that Nevitt’s testimony was confusing and conflicting and that Graham testified at trial that defendant was not involved in the crime, despite her earlier testimony at her own plea hearing that he was a co-participant. “The credibility of identification testimony is a question for the trier of fact that we do not resolve anew.” *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). In fact, “positive identification by witnesses may be sufficient to support a conviction of a crime.” *Id.* Thus, we must determine whether a rational trier of fact could have identified defendant as a participant in the armed robbery and carjacking beyond a reasonable doubt. See *id.*

While Nevitt’s trial testimony may be seen as confusing, when viewing the evidence in the light most favorable to the prosecution, the jury could have found beyond a reasonable doubt that defendant participated in the planning and the execution of the armed robbery and carjacking. Nevitt first identified defendant in the photographic lineup as the man in the back seat holding the knife to his throat. However, at a preliminary examination, Nevitt identified a man other than defendant as the man who was in the back seat. During his trial testimony, Nevitt stated that the person he picked out of the photographic lineup was the man who was standing along the side of the car, instead of the man in the back seat. But, when asked by the prosecution, Nevitt stated that the person he picked from the photographic lineup was not in the courtroom. However, the court later asked if Nevitt saw either of the two men who participated

in the incident in the courtroom, and he confirmed he recognized one: defendant. He stated that defendant was in the back seat during the incident. When asked why he did not point out defendant when first asked, he responded that he had been looking at the defense attorney. It was also elicited during trial that Nevitt does wear glasses; however, he only needs his glasses to read and write. He is able to see pictures without his glasses. Further, he could see around the courtroom clearly and did not need his glasses to perform daily activities. Sergeant Matthew Fulks testified that Nevitt selected defendant's photograph at the photographic lineup and identified defendant as the one who put a knife to his neck.

At trial, Graham testified that defendant was not involved in the crimes and that only she and Timothy Wade planned and executed the robbery and carjacking. She admitted, however, that she had just testified under oath that very morning, during her own plea hearing, that both Wade and defendant helped her plan the crimes. She admitted that she testified at her plea hearing that the plan was for defendant and Wade to be waiting at the destination spot, ready to rob her grandfather, and that one or both of them would have a knife in order to accomplish the robbery. She also admitted that she testified at her plea hearing that defendant walked over to her grandfather's car at the time of the robbery. And while she claimed that she was telling the truth at trial and characterized her relationship with defendant as only being "friends," Graham admitted that she and defendant had been in a romantic relationship for "months," including during the time of the robbery, and that she was still communicating with him throughout the proceedings, including on the day of trial and before she took the stand.

Despite the indications that the trial testimony of Graham and Nevitt was confusing and contradictory, it was reasonable for the jury to find Nevitt's identification of defendant as a participant in the armed robbery and carjacking credible and reliable. It is also reasonable that the jury might place more weight on Graham's identification of defendant during her plea hearing.¹ Based on these facts, the argument of conflicting and confusing testimony alone is insufficient to establish that defendant's conviction was based on insufficient evidence.

Alternatively, defendant argues that the prosecution did not present sufficient evidence to prove beyond a reasonable doubt that defendant acted as an aider and abettor to Wade and Graham. We disagree.

To prove that defendant aided and abetted the commission of the offenses alleged, the prosecution must show the following:

- (1) the crime charged was committed by the defendant or some other person;
- (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and
- (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time [the defendant]

¹ Graham's plea hearing testimony is not considered to be hearsay because she was subject to cross-examination and her plea testimony—which was inconsistent with her trial testimony—was given under oath subject to the penalty of perjury. MRE 801(d)(1)(A).

gave aid and encouragement. [*People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006).]

Defendant again argues that Nevitt's and Graham's testimony was confusing and contradictory. However, the jury was presented with sufficient evidence to convict defendant of aiding and abetting the armed robbery and carjacking. Again, "positive identification by witnesses may be sufficient to support a conviction of a crime." *Davis*, 241 Mich App at 700. Although Nevitt's testimony was confusing regarding defendant's precise role in the armed robbery and carjacking—as the man with the knife in the back seat or the man standing outside the car—he was clear that defendant was involved in one of those capacities. Regardless of his somewhat confusing testimony, the jury reasonably found Nevitt's identification of defendant as a participant in the armed robbery and carjacking credible and reliable. Thus, a rational trier of fact could have found defendant's identity proven beyond a reasonable doubt. See *id.* Accordingly, there was sufficient evidence presented for the identity element for both the armed-robbery and carjacking convictions.

Affirmed.

/s/ Mark T. Boonstra
/s/ Pat M. Donofrio
/s/ Jane M. Beckering