

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MELVIN K. BENTLEY,

Defendant-Appellant.

UNPUBLISHED

July 30, 1996

No. 178475

LC No. 93-122749-FC

Before: Neff, P.J., and Fitzgerald and C. A. Nelson,* JJ.

PER CURIAM.

Defendant, a juvenile, was convicted by a jury of armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and sentenced as an adult to consecutive terms of two years' imprisonment for felony-firearm and two to twenty years' imprisonment for armed robbery. Defendant appeals as of right and we affirm.

On the evening of January 15, 1993, the victim was robbed at gunpoint in a hotel parking lot by defendant and codefendant Kobie Campbell while she stood outside her car. Campbell was sitting in the driver's seat of his car when he demanded that the victim relinquish her money. A person in the front passenger's seat pointed a sawed-off shotgun at the victim. Although the victim could not identify defendant as the gunman, Southfield police officers witnessed defendant sitting in the passenger seat of Campbell's car immediately before and after the robbery.¹ At trial, defendant advanced the defense of duress. Defendant stated that he had merely accompanied Campbell to a hotel party and was unaware of Campbell's plan to commit armed robbery. Although he acknowledged possessing a sawed-off shotgun during the robbery, defendant claimed that Campbell tossed it to him immediately before the crime, motioned as if he had another gun in his jacket, and told defendant that he would be shot unless he participated in the crime.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant argues that there was insufficient evidence produced at trial to counter his defense of duress. We disagree. Duress is a well-recognized defense that excuses a defendant from criminal responsibility for an otherwise criminal act when the defendant was compelled to commit the act; the compulsion or duress overcame the defendant's free will; and his actions lacked the required mens rea. *People v Luther*, 394 Mich 619, 622; 232 NW2d 184 (1995). A defendant successfully raises this defense when he presents evidence from which a jury could conclude: (1) the threatening conduct was sufficient to create in the mind of a reasonable person the fear of death or serious bodily harm; (2) the conduct in fact caused such fear of death or serious bodily harm in the mind of the defendant; (3) the fear or duress was operating upon the mind of the defendant at the time of the alleged act; and (4) the defendant committed the act to avoid the threatened harm. *Id.* Ultimately, the credibility to be accorded to a claim of duress lies solely within the province of the fact-finder and is to be determined within the facts of each case as it arises. *People v Blair*, 157 Mich App 43, 51; 403 NW2d 96 (1987). On this question, the jury may legitimately consider a defendant's failure to report the alleged duress to the proper authorities. *Id.*, at 49.

The prosecution presented evidence from which a rational trier of fact could conclude beyond a reasonable doubt that defendant acted freely when he robbed the victim. Although defendant claimed to have no awareness of Campbell's intent to commit the crime, police witnessed defendant and Campbell actively "casing" hotel parking lots before they found their victim. The victim testified that she did not observe Campbell forcing his passenger to point the gun at her. While defendant claimed to have put his head down and started to cry immediately after Campbell tossed the gun to him, the victim did not see the gunman crying. When defendant was arrested, he did not inform the police that Campbell forced him to participate. Furthermore, defendant and Aaron Simons, the other passenger in Campbell's car, gave conflicting accounts of what transpired during the robbery. Lastly, the prosecution established that defendant was already armed with the sawed-off shotgun before Campbell stuck his hand in his jacket to convince defendant he had a gun. In view of the inherent implausibility of defendant's story and the contradictions between his, Simons', and the victim's testimony, the jury resolved credibility issues against defendant and rejected his claim of duress. We conclude that a rational trier of fact could conclude beyond a reasonable doubt that defendant was not acting under duress when he robbed the victim, and therefore we will not disturb the jury's decision.

Defendant next argues that there was insufficient evidence to support the trial court's decision to instruct the jury that it could find duress only if the situation did not arise because of defendant's fault or negligence. We disagree. Jury instructions must include all material issues, defenses, and theories, if there is evidence to support them. *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994). A defendant's own negligence or fault operates to bar a defense of duress. CJI 2d 7.6(2)(e); *Blair*, *supra* at 51.

There was ample evidence to support the trial court's decision to give an instruction on defendant's fault in relation to his defense of duress. Defendant accepted Campbell's invitation to

attend a hotel party without ever having been out with him before and without knowing where the party was and who would be attending. Campbell drove slowly with his lights turned off through several hotel parking lots and repeatedly pulled into empty parking spaces. In light of his suspicious behavior, defendant neither asked Campbell what he was doing nor where they were going. Defendant merely listened to the radio without questioning the strangeness of the situation. At best, the evidence shows that defendant failed to exercise reasonable diligence by neglecting to inquire about these suspicious circumstances. Since evidence of defendant's negligence was adduced at trial, the decision to instruct the jury on the role fault played in defendant's duress defense was correct.

Finally, defendant argues that he should be resentenced because the trial court failed to make specific, detailed findings of fact on the record in support of its decision to sentence him as an adult. We disagree. A court with jurisdiction over a juvenile offender has discretion to sentence the juvenile as an adult if it complies with the mandates of MCL 769.1; MSA 28.1072; *People v Lyons (On Remand)*, 203 Mich App 465, 468-469; 513 NW2d 170 (1994). MCL 769.1(3); MSA 28.1072(3) provides, in pertinent part, that the sentencing court "shall conduct a hearing at the juvenile's sentencing to determine if the best interests of the juvenile and the public would be served by . . . committing the juvenile to a state institution or agency . . . or by imposing any other sentence provided by law for an adult offender." The sentencing court is instructed to consider specific statutory criteria when making the sentencing decision. The court's findings of fact and conclusions of law may be incorporated in a written opinion or stated on the record. MCR 6.931E(4). Further, the trial court's duty to make findings of fact and conclusions of law is satisfied where it is manifest that the court was aware of the factual issues and correctly applied the law. *In re Forfeiture of \$19,250*, 209 Mich App 20, 28-29; 530 NW2d 759 (1995).

Here, although the statements by the court on the record are rather brief, the court incorporated the reports prepared by the Probation Department and the Department of Social Services. Those reports sufficiently detail the manner in which the statutory requirements are met in this case. Accordingly, we find that the trial court's findings were sufficiently specific and detailed.

In reaching our conclusion, we distinguish this case from *People v Hazzard*, 206 Mich App 658; 522 NW2d 910 (1994). In *Hazzard, supra*, at 660, this Court determined that the trial court, in finding the juvenile should be sentenced as an adult, engaged in a lengthy diatribe unrelated to the issues and made only piecemeal findings that were merely "potentially relevant to the statutory criteria." Here, by contrast, the trial court specifically incorporated the reports which fully set forth the manner in which the statutory criteria were analyzed to reach the conclusion that defendant should be sentenced as an adult. We find no error in this procedure.

Defendant's convictions and sentences are affirmed.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Charles A. Nelson

¹ Defendant does not contest the essential facts of the robbery, or that he held the sawed-off shotgun while Campbell demanded the victim's money.