

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AARON L. COOPER,

Defendant-Appellant.

UNPUBLISHED

December 3, 1996

No. 186212

LC No. 94-136794-FH

Before: Fitzgerald, P.J., and Cavanagh and N.J. Lambros,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of breaking or entering a vehicle with intent to steal property, damaging the vehicle, MCL 750.356a; MSA 28.588(1). He subsequently pleaded guilty of habitual offender, fourth offense, MCL 769.12; MSA 28.1084, and was sentenced to a prison term of 2 $\frac{1}{4}$ to 15 years. Defendant appeals as of right. We affirm.

Defendant was one of a trio of individuals stopped shortly after the charged offense occurred. After the prosecution rested its case at trial, defendant moved for a directed verdict, which was denied. He now argues that the trial court erred in denying his motion for a directed verdict because there was insufficient evidence to establish that he was one of the two individuals the complainant saw in and around his automobile on the night the charged offense occurred or that he was the driver of the vehicle that the complainant saw the two perpetrators enter.

In reviewing the denial of a motion for a directed verdict in a criminal trial, this Court views the evidence "in a light most favorable to the prosecution to determine whether the evidence was sufficient to permit a rational factfinder to find the essential elements of the crime proven beyond a reasonable doubt." *People v Patridge*, 211 Mich App 239, 240; 535 NW2d 251 (1995). This Court will review the denial of a motion for a directed verdict de novo. *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995).

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

Defendant does not argue that the evidence failed to establish the elements of the charged crime. He does contend that the evidence is insufficient to establish his identity as one of the perpetrators. Defendant further argues that if circumstantial evidence presented at trial is consistent with a theory of innocence that a rational trier of fact could not fail to accept as reasonable, then the theory establishes reasonable doubt. Defendant's position is that the circumstantial evidence in this case is consistent with the theory that he and his two codefendants were innocently driving in the direction that the complainant had seen the suspects turn while the real perpetrators took some evasive action by changing their course and going in another direction.

As the trial court pointed out in its denial of defendant's motion, "[t]he prosecutor is not required to present direct evidence linking the defendant to the crime. Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of the offense." *People v Saunders*, 189 Mich App 494, 495-496; 473 NW2d 755 (1991). Furthermore, identity may be established by circumstantial evidence alone. *People v Marsh*, 177 Mich App 161, 168; 441 NW2d 33 (1989).

The evidence presented at trial, viewed in a light most favorable to the prosecution, established that the complainant saw two individuals in and around his car, which was parked in his driveway. The individuals were both wearing dark, hooded outerwear. After the complainant shouted at them, they ran to the passenger side of a four-by-four vehicle that was black with a red stripe. The complainant observed them turning south onto a nearby highway. Within minutes, police officers stopped the defendant and two companions in a black four-by-four vehicle with a red stripe that was heading southbound on the highway. All three individuals wore dark hooded jackets. Various tools and car radios were in the back of their vehicle.

Viewed in a light most favorable to the prosecution, the evidence was sufficient from which a rational trier of fact could have found that this defendant, acting in concert with two other individuals, broke and entered into the complainant's car, which caused damage to the door lock and the radio cover, and intended to permanently deprive the complainant of his car radio. The trial court therefore correctly denied defendant's motion for a directed verdict.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Mark J. Cavanagh

/s/ Nicholas J. Lambros