STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NICHOLAS EUGENE DAVIS,

Defendant-Appellant.

UNPUBLISHED
March 11, 1997

No. 193240
Macomb County
LC No. 95-001469

Before: White, P.J., and Cavanagh and J.B. Bruff,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of attempted kidnapping, MCL 750.92; MSA 28.287, and was sentenced to five years' probation, the first 280 days to be served in Macomb County Jail, and six months on the tether program. Subsequently, defendant violated the terms of his probation and was sentenced to two to five years' imprisonment. Defendant now appeals as of right. We affirm.

On appeal, defendant argues that there was not sufficient evidence for the trial court to find that he was guilty of attempted kidnapping. In reviewing such a challenge, this Court must view the evidence in the 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. Circumstantial evidence, and reasonable inferences arising from the evidence, may constitute satisfactory proof of the elements of the offense. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

Kidnapping is the willful and malicious, and without lawful authority, forcible or secret confinement of another person against his or her will. *People v Jaffray*, 445 Mich 287, 297; 519 NW2d 108 (1994); MCL 750.349; MSA 28.581. An attempt to commit a crime is "(1) an intent to do an act or to bring about certain consequences which would in law amount to a crime; and (2) an act in furtherance of that intent which . . . goes beyond mere preparation." *People v Jones*, 443 Mich 88, 100; 504 NW2d 158 (1993), quoting 2 LaFave & Scott, Substantive Criminal Law, § 6.2, p 18; see also MCL 750.92; MSA 28.287.

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

Defendant contends that the only evidence to indicate that he intended to kidnap seven-year-old Erica Clause was Clause's testimony that defendant told her that she should go with him because her mother was in the hospital. Clause testified that when she was on the ground, defendant tried to grab the back of her skate. Eric Dunkle testified that he observed defendant trying to grab the back of Clause's skate. If defendant had been successful in obtaining a hold on the skate, or if Clause had gone with defendant voluntarily because she believed her mother was in the hospital, defendant's action would have led to the completion of the kidnapping. Thus, viewing the evidence in the light most favorable to the prosecution, the trial court could have found that the essential elements of attempted kidnapping were proven beyond a reasonable doubt.

Defendant also argues that the trial court did not make proper findings of fact because it did not state what act defendant committed in furtherance of the kidnapping. This Court reviews a trial court's findings of fact for clear error. *People v Barrera*, 451 Mich 261, 269; 547 NW2d 280 (1996). Factual findings are sufficient as long as it appears that the trial court was aware of the issues and correctly applied the law. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993).

We find that defendant's argument that the trial court failed to conclude that he committed an overt act is without merit. The trial court first explained that Clause's testimony was credible and believable, thereby demonstrating its awareness that an issue in the case was the credibility of Clause. Further, the trial court found that defendant told Clause he was going to take her to the hospital to see her mother. This was an overt act committed by defendant in furtherance of the kidnapping. Accordingly, we conclude that the trial court's findings of fact were adequate.

Affirmed.

/s/ Helene N. White
/s/ Mark J. Cavanagh
/s/ John B. Bruff