STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EDWARD COBB,

Defendant-Appellant.

UNPUBLISHED
May 23, 1997

No. 194927
Ottawa Circuit Court
LC No. 95-19259-FC

Before: Young, P.J., and Doctoroff and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions by a jury of assault with the intent to murder, MCL 750.83; MSA 28.278, unlawful driving away of an automobile, MCL 750.413; MSA 28.645, and larceny in a building, MCL 750.360; MSA 28.592. Defendant received concurrent sentences of fifteen to thirty years' imprisonment for the assault conviction, two to five years for the unlawful driving away conviction, and one to four years for the larceny conviction. We affirm.

I

Defendant first argues on appeal that insufficient evidence was presented from which a reasonable jury could conclude that defendant assaulted the victim with the intent to kill him, or that defendant aided codefendant Woods, knowing that Woods intended to kill the victim. Defendant contends that it is clear from his own testimony that he intended only to steal the victim's vehicle and run away, and that he used the large kitchen knife only to scare the victim, having no intent to kill. We disagree.

When reviewing a sufficiency of the evidence question, rather than relying on defendant's self-serving testimony as he suggests, this Court instead reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515, modified 441 Mich 1201; 489 NW2d 748 (1992). "Inherent in the task of considering the proofs in the light most favorable to the prosecution is the necessity to avoid a weighing of the proofs or a determination whether testimony favorable to the prosecution is to be believed. All such concerns are to be resolved

in favor of the prosecution." *People v Herbert*, 444 Mich 466, 474; 511 NW2d 654 (1993). Moreover, when deciding this issue, this Court will not interfere with the jury's role of determining the weight of the evidence or the credibility of the witnesses. *Wolfe, supra*, 514.

Defendant was charged with the crime of assault with the intent to murder, MCL 750.83; MSA 28.278, which, in order to sustain a conviction, requires evidence to establish beyond a reasonable doubt that defendant tried to physically injure the victim, that defendant had the present ability to cause the injury, and that at the time he committed the assault, defendant intended to kill. *People v Hunter*, 141 Mich App 225, 234; 367 NW2d 70 (1985). Defendant could also be properly convicted of the crime as an aider and abettor, even if he was not the principal in the assault against the victim, so long as the evidence showed that defendant in some way aided codefendant Woods, knowing that Woods intended to kill, if necessary, to accomplish the theft of the victim's vehicle. *People v Harris*, 190 Mich App 652, 658; 476 NW2d 767 (1991); *People v Daniels*, 163 Mich App 703, 708; 415 NW2d 282 (1987). Moreover, the intent to kill may be proven, sufficient to support defendant's conviction, by inference from the facts in evidence, *People v Lawton*, 196 Mich App 341, 350; 492 NW2d 810 (1992), and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient, *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984).

We find that the record clearly provides sufficient evidence from which a factfinder could reasonably infer that defendant intended to kill the victim, or at least aided codefendant Woods, knowing that Woods intended to kill. First, there was evidence presented that defendant and Woods went into the victim's bedroom brandishing large knives, that defendant said in a demanding voice to Woods, "Stab him, Tim, come on, stab him," referring to the victim, that defendant attempted to stab the victim's neck as the victim struggled through the bedroom doorway, and that defendant then threw the knife at the victim as the victim was attempting to escape out the front door of the house. The evidence shows that once outside, defendant forcefully struck the victim more than once with a wooden chair he had retrieved from the victim's kitchen, aiming for the victim's head, and that after breaking the chair, went to the garage to get a shovel. The shovel was then given to Woods, and used to beat the victim unconscious. Defendant and Woods thereafter sped off, leaving the victim lying in the neighbors' driveway in a pool of blood. Five knives, a bloody shovel, and a broken chair were collected from the scene of the crime.

Second, aside from the use of deadly weapons, the evidence also established that defendant and Woods continued to chase the victim from yard to yard as the victim attempted to seek help, and that they continued to strike the victim to the point of unconsciousness, inflicting serious and life-threatening injuries. Last, after committing the assault, defendant and Woods told another witness that they had killed both the victim and his wife, and defendant later admitted to the police that it was "possible" that he and Woods had talked about killing the victim and his wife before they engaged in the assault, indicated that he thought the victim was probably dead, and that he "probably" did encourage Woods to stab the victim while in the victim's bedroom. In consideration of this evidence, we find that the jury's conclusion was reasonable and justified under the circumstances presented in this case.

II

Defendant next argues that the circuit court erred in assuming jurisdiction under the automatic juvenile waiver statute, MCL 600.606; MSA 27A.606, of the nonenumerated offenses of larceny in a building and unlawful driving away of an automobile. In so arguing, defendant urges this Court to follow its holding in *People v Deans*, 192 Mich App 327; 480 NW2d 334 (1991), a case that has been specifically rejected and overruled by our Supreme Court, or in the alternative, find that the charged offenses did not "arise out of the same transaction" because they do not together establish a single intent and goal. More specifically, defendant contends that he and codefendant Woods intended only to steal the victim's vehicle and run away, and that the assault in no way was committed to advance that goal, again arguing that there was no proof of an intent to kill. We disagree and find that the circuit court correctly assumed jurisdiction over each charge, and likewise, correctly tried all three offenses in one prosecution.

First, although this Court held in *Deans*, *supra*, that if the prosecution wished to charge a juvenile with both an enumerated and a nonenumerated offense (as in the present case), while the former would be automatically waived to the circuit court under the automatic waiver statute, the prosecution would have to seek a valid waiver from the probate court in order to try the juvenile in circuit court for the latter, in *People v Veling*, 443 Mich 23, 41-43; 504 NW2d 456 (1993), our Supreme Court rejected that holding. In *Veling*, our Supreme Court concluded that "the circuit courts have jurisdiction to sentence juveniles charged with enumerated offenses, but convicted of nonenumerated lesser included offenses, and to try and sentence juveniles charged with both enumerated and nonenumerated offenses arising out of the same transaction." *Id.*, 42-43. With this having been resolved by our Supreme Court, this Court is now bound by that rule whether or not it believes the ruling to be erroneous. *Boyd v W G Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993). It is our Supreme Court's obligation to overrule or modify case law. *Id.*

Next, we find that the circuit court correctly assumed jurisdiction over all three charges absent a juvenile waiver hearing for the nonenumerated offenses of larceny and unlawful driving away because each "arose out of the same criminal transaction." We conclude that the three offenses committed by defendant occurred in a continuous time sequence, are factually interrelated, were part of the same criminal episode, and display a single intent and goal to steal and make a clean getaway, eliminating any obstacle that may increase his and codefendant Woods' chance of being caught. See *People v Feazel*, 219 Mich App 618, 622-623; 558 NW2d 219 (1996); *People v Hunt (After Remand)*, 214 Mich App 313, 316; 542 NW2d 609 (1995).

III

Last, despite his failure to object during trial to the court's instructions to the jury, defendant now argues that he was denied his right to a properly instructed jury because the court failed to fully instruct the jury on witness credibility in accordance with CJI2d 3.6(3). We find that defendant's argument is without merit and raises no concern of manifest injustice, see *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). Our review of the record reveals

that the lower court read CJI2d 3.6 word for word, including section (3), to the jury before any of the witnesses took the stand to testify in the trial, and again instructed the jury on the issue of witness credibility at the close of the proofs.

Affirmed.

/s/ Robert P. Young, Jr.
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh