

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES LEWIS MOORE,

Defendant-Appellant.

UNPUBLISHED

July 1, 1997

No. 189655

Recorder's Court

LC No. 95-004829-FH

Before: Markman, P.J., and Holbrook, Jr., and O'Connell, JJ.

MEMORANDUM.

Defendant was convicted following a bench trial of attempted carjacking, MCL 750.92; MSA 28.287; MCL 750.529a; MSA 28.797(a), and was sentenced to serve a prison term of two to five years, consecutive to a parole violation. He appeals as of right and we affirm.

Defendant first argues that insufficient evidence was presented to sustain his conviction of attempted carjacking because the complainant's testimony was replete with inconsistencies. We find no merit to defendant's argument. When reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Here, the complainant testified that defendant approached him while he was in his car, grabbed him by the shirt, and pulled him toward his car window. As soon as the complainant was outside his car, defendant wrestled him to the ground and, along with another man, stomped and kicked him, demanding repeatedly that complainant turn over his car keys. The complainant was eventually able to escape without handing over his car keys, and when he later returned with the police, his car was in the same spot but the battery was missing. The testimony of the responding police officer was consistent with the portion of the complainant's testimony relating to events that transpired after the arrival of the police. Moreover, the officer's testimony that complainant was bleeding and that defendant appeared to have blood on his hands further corroborated the complainant's testimony. Although the complainant's testimony was at times inconsistent, questions of credibility are to be determined by the trier of fact, rather than an appellate court, which does not have the benefit of observing the testimony.

See *Wolfe, supra* at 514-515; *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991); *People v Sharbnow*, 174 Mich App 94, 105; 435 NW2d 772 (1989). Viewed in a light most favorable to the prosecution, the evidence was sufficient to convict defendant of attempted carjacking.

Defendant also argues that consecutive sentencing was inappropriate because he was denied a parole revocation hearing and because the consecutive sentencing statute constitutes an ex post facto law. We find no merit to these claims. On September 7, 1982, defendant was sentenced to serve 1 ½ to fifteen years in prison for armed robbery, consecutive to a two-year term for felony-firearm. In July 1986, defendant was paroled for twenty-four months, but in October of that year he failed to report and a bench warrant was issued for his arrest on a parole violation. Thus, because defendant's parole was neither successfully completed nor formally discharged, his subsequent attempted carjacking in 1995 was committed while he was on parole, subjecting him to consecutive sentencing. MCL 768.7a(2); MSA 28.1030(1)(2). See *People v Raihala*, 199 Mich App 577, 579-580; 502 NW2d 755 (1993). Defendant's claim that no fact-finding hearing was held on the alleged parole violation, pursuant to MCL 791.240a; MSA 28.2310(1), must be addressed initially to the parole board, not to this Court in a direct appeal of a *subsequent* conviction. Furthermore, given that defendant committed the current offense in 1995, and the consecutive sentencing statute was amended in 1988 to apply to prisoners who commit felonies while on parole, MCL 768.7a(2); MSA 28.1030(1)(2); *Wayne Co Prosecutor v Dep't of Corrections*, 451 Mich 569, 577-578, 581; 548 NW2d 900 (1996), application of its provisions in this case was not ex post facto. See *People v Davis*, 181 Mich App 354, 357; 448 NW2d 842 (1989).

Affirmed.

/s/ Stephen J. Markman
/s/ Donald E. Holbrook, Jr.
/s/ Peter D. O'Connell