

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BYRON REGISTER,

Defendant-Appellant.

UNPUBLISHED

November 14, 1997

No. 193443

Recorder's Court

LC No. 95-008945

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EZELL KIRKSEY,

Defendant-Appellant.

No. 194260

Recorder's Court

LC No. 95-008945

Before: MacKenzie, P.J., and Sawyer and Neff, JJ.

PER CURIAM.

Following a bench trial, defendants were convicted of extortion, MCL 750.213; MSA 28.410, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant Register was sentenced to five to twenty years' imprisonment for the extortion conviction and two years' imprisonment for the felony-firearm conviction. Defendant Kirksey was sentenced to six to twenty years' imprisonment for the extortion conviction and two years' imprisonment for the felony-firearm conviction. Defendants now appeal as of right. We affirm.

Defendant Register argues there was insufficient evidence to support his conviction for extortion and felony-firearm. When reviewing a claim for insufficient evidence, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could conclude

that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reeves*, 222 Mich App 32, 34; 564 NW2d 476 (1997). Questions of credibility should be left to the trier of fact to resolve. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

The elements of extortion are (1) an oral communication maliciously encompassing a threat; (2) the threat must be to injure the person or property of the person threatened; and (3) the threat must be with intent to extort money or to obtain a pecuniary advantage to the threatener. MCL 750.213; MSA 28.410; *People v Fobb*, 145 Mich App 786, 790; 378 NW2d 600 (1985).

In this case, the victim, Stephen McGuire, owed money to defendant Kirksey and sought extra time to repay him. McGuire went to Kirksey's house, where Kirksey, his brother, an individual name Co-Co, and defendant Register were present. Kirksey's brother pulled a gun and stroked McGuire's dog with it. Co-Co then took the gun, indicated that he was going to kill McGuire, and shot the dog. After defendant Register carried the dog out of the house, Co-Co gave him McGuire's car keys and told him to go blow the car up. Defendant left briefly. When he returned, he told McGuire that his car had a little dent in the front and in the back. Shortly thereafter, Co-Co gave the gun to defendant and instructed him to watch McGuire. Defendant placed the gun down, right next to him. Although defendant never pointed the gun directly at McGuire, McGuire testified that he never felt he was free to leave. McGuire eventually contacted his mother, who agreed to pay defendants.

In his appeal, defendant Register claims there was insufficient evidence that he threatened McGuire because he did not point the gun at him. The claim is without merit. Defendant was in possession of a gun, the same gun that had been used to shoot McGuire's dog only a short time earlier and used to threaten McGuire's life. Under these circumstances, control of the gun was sufficient to constitute a threat. Register also argues that there was insufficient evidence that he intended to extort money from McGuire. Again, we disagree. Although Register did not physically participate in making the arrangements to obtain the money, his intent can be inferred from the circumstances. *People v Turner*, 213 Mich App 558, 567; 540 NW2d 728 (1995). Defendant Register knew of the threats made to obtain money and he helped enforce those threats by holding McGuire with a gun. Further, he admitted that he drove to a gas station so he could get his money. Viewing this evidence in a light most favorable to the prosecution, a reasonable trier of fact could conclude that defendant had the intent to extort money.

Finally, defendant Register argues that insufficient evidence was presented to sustain his felony-firearm conviction. We disagree. A conviction for felony-firearm requires proof that the defendant carried or possessed a firearm during the commission of a felony. MCL 750.227b; MSA 28.424(2); *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). Here, the evidence viewed in a light most favorable to the prosecution, established that a gun was used during the course of the extortion, and that defendant Register was at a minimum in constructive possession of the gun. Defendant Register's convictions are therefore affirmed.

In his appeal, defendant Kirksey argues that the waiver of his right to a jury trial was not made knowingly, voluntarily, and understandingly. We disagree. Defendant admitted that he had discussed

his waiver with his attorney. The trial court orally advised defendant of his right to have a jury hear his case and if he waived that right, that the court would decide his case. He also orally denied that any threats or promises were made to him in exchange for his waiver. Finally, he acknowledged in writing that he was waiving his right to a jury trial. We find that defendant knowingly, voluntarily, and understandingly waived his right to a jury trial in accordance with MCR 6.402(B). *People v Reddick*, 187 Mich App 547; 468 NW2d 278 (1991).

Affirmed.

/s/ Barbara B. MacKenzie

/s/ David H. Sawyer

/s/ Janet T. Neff