STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JUETTE LAVELL PETERSON,

Defendant-Appellant.

UNPUBLISHED
December 30, 1997

No. 194981
Macomb Circuit Court
LC No. 95-001934-FH

Before: Sawyer, P.J., and Wahls and Reilly, JJ.

PER CURIAM.

Defendant was charged and tried on two counts of unarmed robbery, MCL 750.530; MSA 28.798. Following a jury trial, defendant was convicted as to count II, unarmed robbery, MCL 750.530; MSA 28.798. Defendant was sentenced to three to fifteen years' imprisonment. Defendant appeals and we affirm.

First, defendant argues that the trial court abused its discretion in denying his motion for new trial because the trial court's ruling that the verdict was not against the great weight of the evidence was based on an inaccurate recitation of the facts. This Court reviews a denial of a motion for a new trial under an abuse of discretion standard. *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993).

Defendant's conviction was based on evidence that he took a twelve-year-old boy's bicycle by force and intimidation. In his motion for new trial, defendant argued that the testimony of the victim and that of his twelve-year-old step-brother was not credible because none of the witnesses who testified actually saw defendant use force, violence, or fear to take either bicycle. The victim originally testified that defendant grabbed his bicycle, but admitted on cross-examination that it was defendant's friend who initially took the bike. The victim's step-brother did not testify as to *how* defendant got the bicycle, only that he saw him with the bicycle at some point in time.

In denying the motion, the trial court stated that although the testimony was somewhat confused over which of the boys' bicycles defendant actually took, the victim's step-brother clearly recalled seeing defendant take the victim's bicycle and the record clearly supported a finding that both defendant

and his friend took a bicycle. Therefore, the trial court determined that it was unable to conclude, given the entire record of testimony from the two boys, that their testimony lacked credibility. We agree.

On the surface, the victim's testimony is somewhat confused in terms of the order of events and at times conflicts with the other boy's testimony. However, these differences are not critical to the outcome of the case, and do not necessarily reflect on the credibility of the witnesses. The trauma of two twelve-year-old boys being intimidated and robbed by two adults and the fact that the events occurred six months previous to the testimony might allow for some confusion on relatively minor issues without rendering their entire testimony not credible. Moreover, the jury was free to consider some, but not all, of the witnesses' testimony as credible in rendering its decision.

The primary inconsistency is the victim's conflicting testimony about who took his bike. However, this can be explained when considered in conjunction with his step-brother's testimony that the boys had previously agreed to switch bikes on the way back from the hotel and they had each other's bikes at the time the bikes were taken. The victim was also very nervous about testifying. These facts, which were known to the jury, could have accounted for the victim's confusion about who initially took "his" bike. The jury could have considered these factors in weighing the credibility of his testimony.

Defendant is correct that the victim's step-brother's testimony reflects that he did not see or hear what was going on with defendant because defendant's friend was taking his bike and watch at the time. However, he was clearly present when the victim's bike was taken. His testimony indicates that defendant's friend did not take the bike from the victim because he had the other bike between his legs as he pulled the watch off the boy's wrist. At the same time, the victim's step-brother could see the victim and concluded that defendant must have already taken the bike. Contrary to defendant's argument on appeal that it was defendant's friend who took both bikes initially, defendant testified that his friend did *not* take both bikes. Defendant admitted he had possession of the victim's bike, although he could not recall how it happened.

Defendant's subsequent actions, which both boys testified to consistently, also tend to indicate he took one of the bikes. Both boys testified that they saw defendant's friend leave on the bike that he had taken from the victim's step-brother and saw defendant leave with the bike the victim had been about to ride *before* they went inside the hotel lobby to ask for help. When the boys came back out a few minutes later, they both saw defendant with the same bike, but he was further across the parking lot than where they had originally left the bikes. Both boys also testified that defendant said something to the effect that they had ten seconds to get over there or he would slam the bike. Both boys testified that defendant lifted the bike up and started counting out loud, then put the bike over his head and slammed it to the ground, damaging it. Both boys also testified that defendant then demanded $10 to get their "stuff" back, which they understood to mean the other bike and the watch.

The testimony of the investigating police officer, whose credibility has not been challenged by defendant, also tends to show that defendant took one of the bikes. The officer testified that when he asked defendant if he had told the boys that they needed to bring back $10 to get their bike back, defendant responded, "No, I told them to bring back $7." He also testified that, as defendant was

being put into the police car, he stated to the officer, "I told him we shouldn't take the bike." Although defendant denied making either statement, 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). Defendant is not entitled to a new trial simply because the jury chose to believe the other witnesses over defendant.

Because the record as a whole reflects sufficient evidence to show that defendant took one of the bicycles, the testimony of the two boys cannot be said to lack credibility as a matter of law. Therefore, the court did not abuse its discretion in denying defendant's motion for a new trial.

Next, defendant argues that there was insufficient evidence to show that defendant took the bicycle from the victim or that he assisted his friend in taking the bike by force, violence or putting the victim in fear. When reviewing the sufficiency of the evidence in a jury trial, this Court must consider the evidence in the light most favorable to the prosecution in order to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, modified on other grounds 441 Mich 1201 (1992).

The elements of unarmed robbery are: (1) the felonious taking of property from another; (2) by force or violence or assault or putting in fear; (3) while being unarmed. *People v Johnson*, 206 Mich App 122, 125-126; 520 NW2d 672 (1994). Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence that defendant obtained one of the bikes from the boys by putting the boys in fear. When a person is induced to surrender his property through fear or threat of force, the taking is a robbery no matter how slight the cause of the fear or the act of force may be, so long as the person has a reasonable belief that he may suffer injury if he fails to comply with the demand for his property. *People v Hearn*, 159 Mich App 275, 281; 406 NW2d 211 (1987); *People v Laker*, 7 Mich App 425, 429; 151 NW2d 881 (1967). Although defendant did not participate in the earlier assault on the victim's step-brother, he was with the man who did and they were walking toward the boys together. The victim testified that he tried to ride away, but "they" were already grabbing the bikes. The victim also testified that he was afraid that he might be harmed if he did not surrender his bike to defendant. Given what had happened earlier, this belief was entirely reasonable. Both boys testified that the bikes were taken by force. Even if defendant did not speak, he was present when his friend made the verbal demand for the bikes and defendant admitted that he took possession of one of the bikes. Contrary to defendant's argument on appeal that it was his friend who took both bikes initially, defendant testified that his friend did *not* take both bikes. Defendant had possession of one bike and his friend had possession of the other. This is more than mere presence.

Therefore, we find that there was sufficient evidence to justify a finder of fact in determining beyond a reasonable doubt that defendant committed unarmed robbery.

Finally, defendant argues that the trial court abused its discretion in denying his motion for new trial because the jury's verdict was coerced. Because defense counsel not only failed to object to the court's statement, but in fact indicated his satisfaction with the instruction, this issue is not preserved for appellate review. See *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 739 (1993). Moreover, were we to address the issue we would find it to be totally without merit. Merely informing

the jury that the court closed at 5:30 did not constitute coercion. The court otherwise told the jury that they were to "deliberate as long as necessary to reach a fair decision." Defendant was not denied a fair trial. *People v Turner*, 213 Mich App 558, 583; 540 NW2d 728 (1995).

Affirmed.

/s/ David H. Sawyer
/s/ Myron H. Wahls
/s/ Maureen Pulte Reilly