

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LIONEL LAMONT BENNETT,

Defendant-Appellant.

UNPUBLISHED
December 26, 2013

No. 312592
Oakland Circuit Court
LC No. 2012-240534-FC

Before: JANSEN, P.J., and O'CONNELL and M. J. KELLY, JJ.

PER CURIAM.

Defendant Lionel Lamont Bennett appeals of right his jury convictions of two counts of armed robbery, MCL 750.529; conspiracy to commit armed robbery, MCL 750.157a; and two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced Lionel Bennett to serve 25 to 50 years in prison for each armed robbery conviction, 25 to 50 years in prison for his conspiracy conviction, and to two years in prison for each felony-firearm conviction. Because we conclude there were no errors warranting relief, we affirm.

In December 2011, Agustin Arrendondo and Jorge Hernandez visited Tasha Barry's apartment where several people were drinking, including Lionel Bennett and his uncle, Chris Bennett. Before Arrendondo's arrival, Barry told Lionel and Chris Bennett that Arrendondo had received his paycheck and would likely have a substantial amount of cash on him that night. Lionel Bennett, Barry, and Chris Bennett then agreed to rob Arrendondo.

Arrendondo and Hernandez arrived at Barry's apartment at about 10:30 p.m. and later left without incident. However, they returned to the apartment to look for the clip to Arrendondo's cell phone. After they returned, two men in partial masks assaulted and robbed them at gunpoint. Arrendondo and Hernandez identified Lionel Bennett as one of the assailants and a police officer arrested him. Lionel Bennett admitted to planning and assisting in the robbery after his arrest.

On appeal, Lionel Bennett argues that there was insufficient evidence that he conspired to commit armed robbery. This Court reviews a challenge to the sufficiency of the evidence by reviewing "the record evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Roper*, 286 Mich App 77, 83; 777

NW2d 483 (2009). This Court draws all reasonable inferences and credibility choices in support of the jury’s verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

A conspiracy exists when “[a]ny person . . . conspires together with 1 or more persons to commit an offense prohibited by law . . .” MCL 750.157a. “Conspiracy is a specific-intent crime, because it requires both the intent to combine with others and the intent to accomplish the illegal objective.” *People v Mass*, 464 Mich 615, 629; 628 NW2d 540 (2001). Thus, in order to prove that Lionel Bennett conspired to commit armed robbery, the prosecution had to present evidence that he combined with at least one other person with the intent to assault a victim, feloniously take property from the victim’s presence, and to do so while armed. See *People v Smith*, 478 Mich 292, 319; 733 NW2d 351 (2007); MCL 750.157a.

Here, there was evidence that Barry, Lionel Bennett, and Chris Bennett discussed and agreed to rob Arrendondo. Not only did Barry testify about Lionel Bennett’s agreement during the formation of the conspiracy, but Lionel Bennett admitted to a detective that he intended to commit a robbery in the apartment that night with his uncle. There was also evidence that both he and his uncle were armed during the robbery. This evidence permits an inference that both men agreed to take Arrendondo’s money while armed. This testimony was sufficient to enable the jury to conclude that Lionel Bennett conspired to commit armed robbery.

Lionel Bennett, however, contends on appeal that the conspiracy ended after Arrendondo and Hernandez were allowed to leave the apartment unharmed. He further argues that the evidence showed that the armed robbery that occurred was a matter of impulse. We do not agree that this evidence requires the conclusion that the conspiracy ended; considering the evidence in the light most favorable to the prosecution, a reasonable jury could conclude that the conspiracy continued even after Arrendondo and Hernandez left and that it was merely fortuitous that they returned when they did. *Nowack*, 462 Mich at 400; *Roper*, 286 Mich App at 83. There was sufficient evidence to support Lionel Bennett’s conspiracy conviction.

Lionel Bennett also challenges the trial court’s decision to score offense variable (OV) 9 at 10 points. See MCL 777.39. The trial court must score OV 9 at 10 points if it finds that there were two to nine victims who were placed in danger of physical injury or death. MCL 777.39(1)(c). Here, there was evidence that both Arrendondo and Hernandez were in close proximity when they were assaulted and robbed at gunpoint—this evidence was sufficient to support the finding that both men were placed in danger of physical injury or death by each robbery. See *People v Halverson*, 291 Mich App 171, 181; 804 NW2d 757 (2010). Therefore, the trial court did not clearly err. *People v Hardy*, 494 Mich 430, 436; 835 NW2d 340 (2013).

There were no errors warranting relief.

Affirmed.

/s/ Kathleen Jansen
/s/ Peter D. O’Connell
/s/ Michael J. Kelly