

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BARON KEITH DAVIS,

Defendant-Appellant.

UNPUBLISHED

October 9, 2012

No. 307715

Jackson Circuit Court

LC No. 11-004290-FC

Before: RONAYNE KRAUSE, P.J., and BORRELLO, and RIORDAN, JJ.

PER CURIAM.

Following a bench trial, defendant, Baron Keith Davis, was convicted of armed robbery, MCL 750.529. Defendant was sentenced as a habitual offender, fourth offense, MCL 769.12, to 15 to 40 years' imprisonment. For the reasons set forth in this opinion, we affirm.

I. FACTS

On May 17, 2011, Darryl Morris met defendant and co-defendant Darrell Davenport at a liquor store in Jackson. Morris and Davenport had been social friends for 21 years. Morris and defendant met for the first time at the liquor store. Morris bought a cigar for defendant because defendant said he did not have any money. After buying beer and liquor, Morris, defendant and Davenport walked together from the store to a house on Mansion Street around 5:00 p.m. to meet mutual friends for a party. Defendant, Davenport, Morris, and several other people were drinking alcohol and smoking marijuana and crack cocaine. Morris was having a good time and was showing off money that he received from cashing his paycheck earlier that day. Morris gave everyone at the party \$5 each.

Defendant left the house at approximately 11:00 p.m. At about the same time, Morris and Davenport left the residence together. Morris turned to the left and Davenport walked in the opposite direction. As Morris walked past the first adjacent house, he was attacked from behind by an individual who put a knife to his neck and said "give me your money or I'm going to cut your f---ing throat." A fight between Morris and his attacker ensued. During the fight, Morris pulled his attacker's hood off and could see defendant's face. While the two were fighting on the ground, a third individual came and took Morris' wallet from his back pocket. Morris did not see who took the wallet. Immediately after the wallet was taken, Morris observed Davenport and defendant running away.

After the altercation, Morris immediately called 9-1-1, walked a short ways down Mansion Street and stayed there until the police arrived. When the police arrived, Morris gave a description of his attackers, he also explained that one was wearing a grey hooded sweatshirt and the other was wearing a tan coat. Morris suffered stab wounds on his side and a cut on the left side of his throat. Morris said that the knife was a silver flip knife that he had previously seen in defendant's possession at the party earlier that evening. Morris also showed the officers his check stub, which indicated that he was paid \$294. At the time of the robbery, Morris had two \$50 bills, one \$20 bill, one \$10 bill and nine \$1 bills.

Two suspects matching the description that Morris gave, were located on South and Kent Street, approximately three blocks away from where he was attacked. Morris was taken to the area where the two subjects were detained. Defendant and Davenport were illuminated in the back of the patrol cars and were positively identified by Morris. The responding officer testified that defendant appeared to have a blood stain on the right portion of his sweatshirt and abrasions across the upper portion of his hand. When asked about the blood on his hand and sweatshirt, defendant told the officer that he received the cut from donating blood earlier that day. No injuries or marks were observed on Davenport. Defendant had \$9.01 in his pocket and \$61 in his wallet, including a \$50 dollar bill, \$10 dollar bill and a \$1 bill.

In pursuit of Morris' attackers, the police used a tracking dog. The dog picked up a scent on the south side of Mansion Street and followed it eastbound to Kent Street, Prospect Street, Addison Street, and ended at West South Street and Kent Street. Defendant and Davenport were being held by the police at this location. Subsequently, the dog was backtracked to attempt to find the missing wallet, but none was located. The next day, Barbara Parker found the wallet on a nearby street and she turned it over to the police.

At trial, defendant claimed that he – not Morris – was the victim. According to defendant, he left at 11:30 pm. to buy more alcohol at the liquor store. Defendant testified that as he was walking on Mansion Street to the liquor store, Morris attacked him from behind a tree with a knife and told him to give him his money and new LeBron James shoes. Defendant stated that he grabbed Morris' wrists, held onto the knife, and started hitting Morris. During the struggle, defendant got control of Morris' knife and then ran away and met with Davenport on Kent and South Street, where he explained that Morris had attempted to rob him. Shortly thereafter, the police took defendant into custody. Defendant testified he did not tell the police that Morris had just robbed him because he had three cocaine rocks in his sock.

II. ANALYSIS

Defendant argues that there was insufficient evidence to support his armed robbery conviction. In reviewing a challenge to the sufficiency of the evidence, we review the evidence de novo in the light most favorable to the prosecutor to determine whether a rational trier of fact could conclude that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012). In a criminal case, due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact concluding that a defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). We will not interfere with the fact-finder's role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748

(1992). It is for the trier of fact rather than this Court to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

The elements of armed robbery are: (1) assault; (2) a felonious taking of property from the victim's person or presence; (3) while armed with a dangerous weapon. *People v Lee*, 243 Mich App 163, 168; 622 NW2d 71 (2000).

Defendant first argues – regarding the assault element –that Morris lied when he claimed that defendant assaulted him. Instead, defendant's version of the incident was that he, not Morris, was the victim. Defendant asserts that Morris assaulted him with his knife and defendant was injured during the scuffle. However, a prosecutor need not negate every reasonable theory of innocence, but must only prove his own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The prosecution provided sufficient evidence to allow a rational trier of fact to conclude beyond a reasonable doubt that defendant assaulted Morris. An assault is defined as “an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery.” *People v Cameron*, 291 Mich App 599, 614; 806 NW2d 371 (2011) (quotation omitted). A battery is “an intentional, unconsented and harmful or offensive touching of the person of another, or of something closely connected with the person.” *Id.* (quotation omitted). “It does not matter whether the touching caused an injury.” *Id.* “Thus, every battery necessarily includes an assault because a battery is the very consummation of the assault.” *Id.* (quotation omitted). In this case, there was substantial evidence that showed defendant assaulted and battered Morris.

Morris testified that he was attacked from behind by an individual who put a knife to his neck and said “give me your money or I'm going to cut your f---ing throat.” Morris pulled off his attacker's hood and could see defendant's face. This eyewitness testimony standing alone was sufficient to sustain defendant's conviction. See *People v McGhee*, 268 Mich App 600, 624; 709 NW2d 595 (2005) (witness credibility and weight afforded such testimony are questions for the trier of fact). However, there was additional evidence. Defendant had a blood stain on the right portion of his sweatshirt and abrasions on his knuckles. This would have allowed the trier of fact to conclude that defendant suffered the cut when he robbed Morris. See *People v Moorer*, 262 Mich App 64, 77; 683 NW2d 736 (2004) (“[c]ircumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of a crime”). Further, tracking dogs picked up a scent from the scene of the crime and followed it to where defendant and Davenport were being held by the police. In sum, there was sufficient evidence to show that defendant assaulted the victim.

Defendant also argues that there was insufficient evidence that he committed a felonious taking and he states that there were no fingerprints found on Morris' wallet in support of his argument. As noted above, a prosecutor need not negate every theory of innocence. *Nowack*, 462 Mich at 400. Moreover, there was substantial evidence that defendant committed a felonious taking. Morris testified that defendant was the assailant who put a knife to his neck and demanded that he hand over his wallet. Either a completed or an attempted larceny is

sufficient to establish the second element of armed robbery. See *People v Williams*, 288 Mich App 67, 72-73; 792 NW2d 384 (2010). Additionally, Morris testified that a third individual came and took his wallet from his back pocket while he was struggling with defendant. One who aids or encourages the completion of a crime can be convicted as if they committed the crime themselves. *People v Moore*, 470 Mich 56, 63; 679 NW2d 41 (2004). Further, Morris testified that he bought defendant a cigar earlier in the day when defendant complained that he did not have any money. However, after he was detained following the robbery, police found over \$60 on defendant's person in denominations that were similar to the ones that Morris had in his wallet. As noted, circumstantial evidence and reasonable inferences arising there from can amount to satisfactory proof of the elements of a crime. *Moorer*, 262 Mich App at 77.

Finally, defendant argues that there was insufficient evidence to show that he possessed a dangerous weapon—the third and final element of armed robbery. *Lee*, 243 Mich App at 168. However, the evidence would have allowed a trier of fact to conclude beyond a reasonable doubt that defendant possessed a knife during the robbery. Here, Morris testified that defendant put a knife to his neck. Morris had stab wounds on his side and a cut on his neck. Morris testified that defendant used a silver flip knife—the same knife defendant had at a party earlier in the evening. This was sufficient evidence to prove beyond a reasonable doubt that defendant possessed a dangerous weapon.

In sum, there was sufficient evidence in this case to prove all of the elements of armed robbery beyond a reasonable doubt.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Stephen L. Borrello
/s/ Michael J. Riordan