

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COREY EDWARD KOLENDA,

Defendant-Appellant.

UNPUBLISHED

March 8, 2007

No. 267991

Monroe Circuit Court

LC No. 05-034431-FH

Before: Hoekstra, P.J., and Markey and Wilder, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial convictions of attempted unlawfully driving away an automobile, MCL 750.92 and MCL 750.413, and malicious destruction of personal property less than \$200, MCL 750.377a(1)(d). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with attempting to steal a motorcycle. On appeal, defendant maintains that the prosecution presented insufficient evidence to support the convictions. We review a defendant's allegations of insufficiency of the evidence de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. *Id.* However, we do not interfere with the jury's role of determining the weight of the evidence or the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992). Satisfactory proof of the elements of the crime can be shown by circumstantial evidence and reasonable inferences arising therefrom. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). It is for the trier of fact to determine what inferences can be fairly drawn from the evidence, and the weight to be accorded to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Defendant maintains that the prosecutor presented insufficient evidence of identity. He acknowledges that the prosecutor presented the testimony of an eyewitness who claimed that defendant was the person who attempted to steal the motorcycle. Defendant admits that this may have furnished some support for the prosecution's case, but argues that the witness' testimony was not credible because she did not see him for a lengthy time, and was distracted while getting into her van with her children. Defendant also contends that her identification of him in a photo

array should not be viewed as supporting the prosecution's case, because none of the photographs were profile views and the witness only saw him from the side.

We disagree and affirm. The witness' repeated identification of defendant was sufficient to support the convictions. While she was apparently involved in her own business during the theft attempt, she had ample opportunity to observe defendant, was close to him, and provided adequate reasons why she found his demeanor memorable. No evidence suggests that defendant's helmet obscured his facial features. The trial court, as factfinder, was in a better position to judge the eyewitness' credibility, demeanor, and certainty about her identification of defendant as the perpetrator. *Wolfe, supra* at 514-515. In addition, defendant ignores other corroborating evidence that led the police to include defendant's photograph in the lineup. The prosecutor presented sufficient evidence to support the convictions.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Kurtis T. Wilder