

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES MARTY KING,

Defendant-Appellant.

UNPUBLISHED

May 29, 2008

No. 278101

Calhoun Circuit Court

LC No. 06-003587-FC

Before: Davis, P.J., and Murray and Beckering, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree home invasion, MCL 750.110a(2), and unarmed robbery, MCL 750.530.¹ We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Complainant, Paul Stratton, testified that he lived in an apartment house where he shared a common kitchen with his elderly landlord. On July 19, 2006, at approximately 5:00 a.m., Stratton was trying to sleep when he heard noises. He thought that his landlord might need assistance and arose. As he turned on the light in his room, he saw defendant standing in front of him. Defendant told him to turn off the light, and then did so when Stratton did not comply. Defendant told Stratton that he was going to take the change that Stratton kept on a tray, in order to feed defendant's wife and kids. He told Stratton to sit on the bed, and then to get him a pillowcase. Stratton pointed at a pillow. When defendant looked toward it, Stratton grabbed a baseball bat that lay on the side of the bed and hid it next to him. Defendant, who had his hands in his pants touching something with a blue handle in his waistband, told Stratton not to "go for the gun." This caused Stratton to think that defendant was armed. Defendant then took handfuls of change from Stratton's coin tray and brought the tray over to the bed near the pillowcases. After defendant told Stratton that he was going to take some of Stratton's belongings, Stratton told defendant that he could not breathe. When defendant subsequently grabbed Stratton, Stratton hit defendant in the head with the baseball bat. Defendant ran out of the room and left the apartment through the kitchen window. Later, Stratton discovered that defendant had

¹ Defendant was initially charged with armed robbery; however, the jury acquitted defendant of this charge.

apparently also taken \$97 from a money clip in his pants as well as a flashlight with a blue handle. Investigating officers found blood on the windowsill of Stratton's apartment.² This blood was matched to defendant's using a DNA test.

Defendant first argues that the prosecution presented insufficient evidence to support his convictions. We disagree.

We review a defendant's allegations regarding 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 that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* We will 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, amended 441 Mich 1202 (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 fairly can be 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 argues that the prosecutor failed to show that defendant had the intent to commit a larceny in Stratton's home on entry into the apartment. Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient to establish the element of intent. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Defendant admitted that he entered complainant's home in the early morning hours by way of the second floor kitchen window. Given Stratton's testimony about defendant's actions and words when defendant was surprised in the darkened apartment, we find that the prosecutor presented ample evidence to show that defendant intended to rob Stratton at the time he entered the apartment. The prosecutor was not required to disprove defendant's claim that he broke into complainant's apartment simply to use the phone. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Defendant, who was sentenced within the applicable sentencing guidelines, also challenges a number of the trial court's scoring decisions. A trial court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score. *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006). "Scoring decisions for which there is any evidence in support will be upheld." *Id.* We review de novo as a question of law the interpretation of the statutory sentencing guidelines. *Id.*

Defendant first claims that the trial court erred by scoring five points for offense variable (OV) 1 (aggravated use of a weapon). Defendant claims that the prosecution presented no

² This window was located on the second floor of the building. According to the investigating officer, someone entering through the window would need to climb on an electrical box, and then walk across the roof of a covered porch to get to the window.

evidence that “a weapon was displayed or implied” so as to justify this scoring decision. MCL 777.31(1)(e). Defendant ignores Stratton’s testimony about defendant placing his hand on an object in his waistband while telling Stratton not to “go for the gun”, and Stratton’s assertion that defendant’s actions and words caused him to think that defendant was armed. The trial court’s decision to score five points for this OV was supported by the evidence.

Defendant next claims that the trial court erred by scoring ten points for OV 9 (number of victims), because the trial court improperly counted Stratton’s landlord as a “person in danger of injury or loss of life” under MCL 777.39(2)(a), when he was not present during the robbery attempt. We disagree. A person need not be the complainant in a criminal case in order to be considered a victim for purposes of scoring OV 9. However, the person who is not a complainant must have been placed at risk of physical injury by the defendant’s actions in order to be counted as a victim under OV 9. See, e.g., *People v Kimble*, 252 Mich App 269, 274; 651 NW2d 798 (2002). Here, while Stratton’s landlord remained in his room during the robbery, the two shared common space, including the kitchen through which defendant entered. In addition, defendant admitted at trial that the whole apartment was smaller than the courtroom. It is very likely that Stratton’s landlord would have come out of his room had the confrontation continued longer than it did. Nor was anything preventing defendant from entering the additional bedroom in his quest for valuables. The risk of injury presented by these circumstances justified the trial court’s score of ten points for OV 9.

Defendant also claims that the trial court erred when it scored ten points for OV 19 (threat to security or interference with the administration of justice). An individual is scored ten points for this variable when “the offender otherwise interfered with or attempted to interfere with the administration of justice.” MCL 777.49(c). Interfering or attempting to interfere with the administration of justice includes, but is not limited to, acts that constitute obstruction of justice. *People v Barbee*, 470 Mich 283, 286; 681 NW2d 348 (2004). “[T]he phrase “interfered with or attempted to interfere with the administration of justice” encompasses more than just the judicial process.” *Id.* at 287-288. For example, because “[l]aw enforcement officers are an integral component in the administration of justice,” and “[t]he investigation of crime is critical to the administration of justice”, even providing a false name to the police has been held to constitute interference with the administration of justice. *Id.* at 288. So has running from police to escape apprehension. *People v Cook*, 254 Mich App 635, 638, 658 NW2d 184 (2003). In the instant case, when police officers arrived at an acquaintance’s home on the day after the robbery after receiving a tip that defendant was staying at the house, they tried to make contact with him. When they told defendant that they were there “investigating a B & E” defendant barricaded himself in a bedroom, and then got into a struggle with the officers when they forced open the door. Defendant’s actions, while occurring some time after the robbery, interfered with the officers’ investigation of the crime. Because there is some support for the score in the record, we find that the trial court did not abuse its discretion when scoring OV 19.

Affirmed.

/s/ Alton T. Davis
/s/ Christopher M. Murray
/s/ Jane M. Beckering