

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARNELL ANTONIO JONES,

Defendant-Appellant.

UNPUBLISHED

March 1, 2002

No. 227304

Oakland Circuit Court

LC No. 98-162898-FH

Before: Bandstra, P.J., and Murphy and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of conspiracy to commit a fraudulent insurance act, MCL 500.4511(2) and commission of a fraudulent insurance act, MCL 500.4511(1). The trial court sentenced defendant to six months in jail for each offense, two years' probation, restitution and costs. We affirm, but remand for correction of the judgment of sentence. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The jury convicted defendant of participating in a scheme to defraud an automobile insurer. Robert Spindler owned Glass Works, and Phil Vici worked as the body shop manager at Glass Works. Vici testified that on three separate occasions, defendant and his wife, Erica Jones [Erica], brought in the cars they owned to Glass Works. Defendant explained to Vici what he wanted done to the cars, for example a new paint job, new tires, and an alarm system. Defendant instructed Vici to dismantle certain parts of the car and make a vandalism claim report to the insurer. The insurance adjusters examined the dismantled or damaged cars and assessed the claims. Vici opened a Glass Works bank account with only his name on the account; he did not include Spindler's name. Vici wrote checks from this account payable to defendant and/or Erica to pay them for their portion of the insurance proceeds. Vici either signed his name to the checks or forged Spindler's signature. Spindler was not involved in the criminal activity.

Vici testified that on one occasion, defendant arrived at Glass Works wearing a gray uniform with gold insignia. Defendant was wearing a pistol on this occasion. Defendant told Vici that the transmission of the car, a Mazda, was slipping and he wanted Christmas money. He told Vici to remove the wheels and tires, the airbag, and the speedometer cluster, and to break one window. Vici did this and also removed the headlights and an air cleaner. These parts were hidden in the shop. Within a day or two, defendant called Vici to verify that the car had been damaged. On December 25, 1996, defendant called Vici and told him he had better have the money. On December 26, 1996, Erica visited Glass Works to pick up the money and verify the

damage to the car. Erica made two telephone calls. Vici determined that she called defendant and told him that the car had been damaged and Vici had written a check.

The insurance company became suspicious with this latest claim and sent an investigator. The investigator discovered that defendant's grandmother insured the car. She was also listed as the primary driver. However, defendant and Erica were the title owners, and they did not live with defendant's grandmother. This raised further questions with the insurer. The investigator requested a meeting to conduct a recorded interview of defendant, Erica and defendant's grandmother. However, she received no cooperation in this effort. The claim, which would have totaled about \$9000, eventually was denied.

The prosecution presented several checks written to defendant and/or his wife and signed by Vici or in Spindler's name. Vici admitted that he forged Spindler's signature. These checks were made out to pay defendant and Erica their share of the proceeds of the insurance claim. Some were endorsed with defendant's signature.

Defendant admitted that he owned the Mazda, but explained that Erica was the primary driver. He testified that he met Vici only once, in 1995, when Erica introduced them. Defendant also testified that he was at work with the federal government as a customs inspector at Detroit Metropolitan Airport on the days that Vici testified defendant arrived at Glass Works to make the claims. According to defendant, he never went to Glass Works on those days. He denied receiving the checks from Vici, explaining that he received only a \$250 check, which Erica had indicated was to cover a rental car payment.

Defendant further explained that he went to immigration training in Albuquerque on January 6, 1997. Before this training, he wore a white shirt and blue pants as his work uniform and did not carry a weapon. He denied ever wearing the type of uniform described by Vici.

The prosecution charged defendant with conspiracy to commit a fraudulent insurance act, MCL 500.4511(2), and commission of a fraudulent insurance act, MCL 500.4511(1). A jury convicted defendant on both charges. Defendant appeals his convictions.

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

To determine whether the prosecution presented sufficient evidence of guilt to sustain a conviction, this Court must consider the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have concluded that all the elements of the offense were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). The reviewing court must draw all reasonable inferences and make credibility determinations in support of the jury's verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Circumstantial evidence and reasonable inferences arising from that evidence may be sufficient proof of the elements of an offense. *Id.*

MCL 500.4511 sets forth the punishment for persons who commit a fraudulent insurance act under MCL 500.4503. MCL 500.4503 sets forth the elements of a fraudulent insurance act. The prosecution must prove that the defendant (1) knowingly and with the intent to injure,

defraud, or deceive (2) presents, causes to be presented, or prepares with knowledge and belief that it will be presented to an insurer, an oral or written statement to an insurer (3) containing false information concerning any fact or thing material to a claim for payment or benefit pursuant to an insurance policy. MCL 500.4503. A charge of conspiracy requires proof that two or more individuals voluntarily agreed to commit a criminal offense. *People v Justice (After Remand)*, 454 Mich 334, 345; 562 NW2d 652 (1997).

Defendant simply challenges Vici's credibility, resting on inconsistencies within and between Vici's testimony and his statement to police. However, this Court will generally not reverse a conviction based on witness credibility. *People v Hughes*, 217 Mich App 242, 248-249; 550 NW2d 871 (1996). In addition, this Court must defer to the credibility determinations that support the jury's verdict. *Nowack, supra* at 400. Defendant's challenge to Vici's credibility does not provide a basis for reversing the trial court's decision. We accept the jury's credibility determination in favor of Vici's testimony. Viewing the evidence in a light most favorable to the prosecution, the jury could have concluded beyond a reasonable doubt that Vici, defendant, and Erica worked together intentionally to prepare false insurance claims with the intent of benefiting from those claims.

We note that the jury convicted defendant as charged of conspiracy to commit a fraudulent insurance act, MCL 500.4511(2), and commission of a fraudulent insurance act, MCL 500.4511(1). However, the judgment of sentence shows that the jury convicted defendant of two counts of the conspiracy offense. We remand this matter to allow the trial court to correct the judgment of sentence to reflect the offenses with which defendant was convicted and charged.

Affirmed and remanded. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Christopher M. Murray