STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 19, 2013
v	No. 307739 Wayne Circuit Court
TIMOTHY LAMAR COLLINS, Defendant-Appellant.	LC No. 11-007558-FC

Before: CAVANAGH, P.J., and SAAD and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of carjacking, MCL 750.529a, and armed robbery, MCL 750.529. Defendant was sentenced to 85 months to 25 years' imprisonment for his convictions. We conclude that there was sufficient evidence for the jury to properly convict and we reject defendant's claim of prosecutorial misconduct. Accordingly, we affirm.

Defendant first argues that his carjacking conviction was not supported by sufficient evidence of intent to permanently deprive Antoine Harris of his motor vehicle. We have reviewed the record de novo, *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999), and have considered the evidence contained therein in the light most favorable to the prosecution in order 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 Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). Circumstantial evidence and reasonable inferences from that evidence may be sufficient to prove the elements of a crime. *Id.* at 622.

According to the testimony of complainant Harris, he was sitting in his car at a gas station when he was approached by defendant. Defendant pointed a gun at him and demanded that Harris give him the keys to the car. Defendant grabbed for the car keys but did not succeed in getting them. He then told Harris to "run your pockets" and Harris emptied his pockets, giving defendant approximately $140.00 after which defendant left. Based on this evidence, we see no merit to defendant's claim that there was not sufficient evidence that he intended to permanently deprive complainant of his car.

Defendant is correct that a larceny of the vehicle was not accomplished and so defendant could not be properly convicted of larceny on that basis. However, Michigan's carjacking

statute, MCL 750.529a(1), provides that a defendant may be convicted of carjacking, rather than attempted carjacking, even if the intended larceny is not completed. The statute provides

> (1) A person who in the course of committing a larceny of a motor vehicle uses force or violence or the threat of force or violence, or who puts in fear any operator, passenger, or person in lawful possession of the motor vehicle, or any person lawfully attempting to recover the motor vehicle, is guilty of carjacking, a felony punishable by imprisonment for life or for any term of years.
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> (2) *As used in this section, "in the course of committing a larceny of a motor vehicle" includes acts that occur in an attempt to commit the larceny,* or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the motor vehicle. (emphasis added).

Accordingly, since defendant used the threat of force in an attempt to commit larceny of a motor vehicle, he was properly convicted. See *People v Williams*, 288 Mich App 67, 72; 792 NW2d 384 (2010).

Defendant's other argument on appeal is that he was deprived of his constitutional right to a fair trial because the prosecutor vouched for the behavior of unproduced res gestae witnesses. Where issues of prosecutorial misconduct are preserved, this Court reviews them de novo to determine if the defendant was denied a fair and impartial trial. *People v Thomas*, 260 Mich App 450, 453; 678 NW2d 631 (2004).

In closing argument defense counsel argued that the jury should not believe the complainant because the events were alleged to have occurred in a crowded gas station and yet no other witnesses corroborated the complainant's testimony. Defendant argues that it was misconduct for the prosecutor to then state during his rebuttal argument:

> Ladies and gentlemen, mention a few points. The step-father, the step-father met him up after the incident occurred. He's not an eye-witness, that's why I didn't bring him in. You know, why didn't we bring the clerk? The clerk was inside the store, they were out at pump number five. You know, I bring in witness [sic] that have, can give evidence or eye-witness testimony, not somebody who is just there.
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> Secondly, the other people, he even said the other guy at the next pump over, he's telling him get, go on, you know, go on your business, get on, this is none of your business, get going , da, da, da [sic]. And if someone said that to me and they had a gun in their hand and I'm at the next pump, I would have bolted and not come back. I would have been scared if someone, so, you know, and I don't think, I think this witness was very, very credible throughout the thing.

At this point defense counsel objected and the trial court sustained the objection. Defendant did not request a curative instruction, but the court's final instructions to the jury immediately followed and the court instructed the jury that they must decide the case on the evidence and that the remarks of counsel were not evidence.

"Generally, '[p]rosecutors are accorded great latitude regarding their arguments and conduct.'" *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). Defendant points out that a prosecutor may not vouch for the credibility of a witness. *People v Erb*, 48 Mich App 622, 631; 211 NW2d 51 (1973). However, the prosecutor did not vouch for the complainant or for anyone else. His comments were instead directed at rebutting defense counsel's argument that the lack of other witnesses created a reasonable doubt as to his client's guilt. He pointed out that several individuals he could have called were not in fact eyewitnesses and that other people at the gas station most likely fled before they were identified. We do not find this improper under the circumstances and even if it were, the impropriety would be so minor as to be readily cured by the trial court's instruction concerning counsels' arguments.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Douglas B. Shaprio