

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DERRICK CONRAD GARNER, a/k/a
DERRICK C. HERNTON,

Defendant-Appellant.

UNPUBLISHED

August 6, 1996

No. 177271

LC No. 93-36369-FH

Before: MacKenzie P.J., and Markey and J.M. Batzer,* JJ.

PER CURIAM.

Defendant appeals as of right his conviction by a jury of breaking and entering a building with the intent to commit larceny, MCL 750.110; MSA 28.305. Defendant was also convicted of being a third habitual offender, MCL 769.11; MSA 28.1083. Defendant was sentenced to seven to twenty years' imprisonment. We affirm.

During trial, at the close of the prosecution's case and after the jury was given the opportunity to view a video recording of the breaking and entering of the United Oil gas station, defendant was asked to put on and display before the jury the plaid shirt, the gloves, and the purple skull cap that were confiscated as evidence and worn by the perpetrator caught on camera. Defendant now claims that in doing so, he was forced to incriminate himself, and thus denied his constitutional right against self-incrimination. We disagree. Whether the trial court violated defendant's constitutional right is a question of law subject to de novo review on appeal. *People v Connor*, 209 Mich App 419, 423; 531 NW2d 734 (1995).

Michigan's constitutional provision against self-incrimination, Const 1963, art 1, §17, is construed no more liberally than the Fifth Amendment to the United States Constitution. *People v Burhans*, 166 Mich App 758, 761; 421 NW2d 285 (1988). The constitutional privilege against self-incrimination protects a defendant from being compelled to testify against himself or from being

* Circuit judge, sitting on the Court of Appeals by assignment.

compelled to provide the state with evidence of a testimonial or communicative nature. *Id.*, at 761-762. “Compulsion which makes a defendant a source of real or physical evidence does not violate the Fifth Amendment's privilege against self-incrimination,” and “[c]ompelling a defendant to perform actions which demonstrate identifying physical characteristics . . . does not compel a defendant to give testimonial or communicative evidence and so does not violate the privilege against self-incrimination.” *Id.* at 762; see also *Schmerber v California*, 384 US 757, 761, 764; 86 S Ct 1826; 16 L Ed 2d 908 (1966).

In the present case, we find that defendant displayed the clothing for demonstrative and identification purposes (i.e., to allow the jurors to compare their present observations of defendant with the perpetrator seen on the security videotape) and was not forced to communicate or testify. *People v Stone*, 195 Mich App 600, 603-604; 491 NW2d 628 (1992). Thus, defendant's privilege against self-incrimination was not violated.

Next, focusing only on the evidence implicating him as the perpetrator, defendant argues that there was insufficient evidence to support his conviction. We disagree. To review a claim of insufficiency of the evidence, 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 the essential elements of the crime were proven beyond a reasonable doubt. *People v Hurst*, 205 Mich App 634, 640; 517 NW2d 858 (1994).

Defendant specifically argues that the prosecution presented purely circumstantial evidence and was unable to produce any witness who could positively identify him as the perpetrator. However, circumstantial evidence, and the reasonable inferences which arise from that evidence, constitute satisfactory proof to support the jury's decision to convict defendant of the crime charged. *People v Reddick*, 187 Mich App 547, 551; 468 NW2d 278 (1991). We hold that the record was replete with evidence to support the jury's conclusion that defendant was indeed the perpetrator responsible for the breaking and entering of the United Oil gas station.

Here, the black male suspect was first seen wearing a dark-colored cap and coat, carrying a large garbage bag, and fleeing the scene of the crime on a bicycle. Immediately thereafter, the suspect was spotted by the police and followed until he reached the edge of an apartment complex. A witness who was a resident of the complex then reported seeing a black male speed through his backyard on a bicycle, and when he and a friend went outside, they were approached by a man they later identified as defendant. That same witness reported that defendant had emerged from behind the apartment building, the same place where the man on the bicycle had gone, that defendant appeared nervous, and was wearing dark clothing and a skull cap. The police later found a ten-speed bicycle, various articles of clothing, a large garbage bag, and the stolen goods behind the apartment.

In addition, a videotape from the security cameras at the United Oil gas station revealed a perpetrator with facial hair, and wearing gloves, and a skull cap. When defendant was apprehended, he had a significant amount of facial hair, he was wearing the same skull cap, and had a disposable latex

glove in the back pocket of his jeans. At the time of arrest, it was discovered that defendant was wearing several layers of clothing, that his sweatshirt and sweatpants were ripped, and that glass was embedded into the soles of his boots. The glass particles recovered from defendant's clothing and boots were later determined to be consistent with the broken plate glass from the United Oil gas station. We find that the prosecution presented sufficient evidence to prove defendant's identity as the perpetrator beyond a reasonable doubt.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Jane E. Markey

/s/ James M. Batzer