STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 18, 2006
v	No. 260303 Shiawassee Circuit Court
RYAN SCOTT HALL, Defendant-Appellant.	LC No. 04-000866-FC

Before: Donofrio, P.J., and O'Connell and Servitto, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529, conspiracy to commit armed robbery, MCL 750.157a, assault with intent to rob while armed, MCL 750.89, two counts of felonious assault, MCL 750.82, and first-degree home invasion, MCL 750.110a(2). He was sentenced as an habitual offender, second offense, MCL 769.10, to concurrent prison terms of 25 to 50 years for the armed robbery conviction, 225 to 375 months for the conspiracy conviction, 25 to 50 years for the assault with intent to rob conviction, 29 to 48 months for each felonious assault conviction, and 160 to 240 months for the home invasion conviction. He appeals as of right. We affirm.

On February 18, 2004, defendant and a man named "Snoop" were driven by a friend to the house of one of the victims, Mark McCarthy. According to McCarthy, his housemate Michael Covert had hidden money there. Snoop alone initially went inside to talk to McCarthy, but he returned to the friend's vehicle minutes later and went back to the house with defendant. When Snoop went back, he had a gun and defendant was wearing a mask and was armed with a club. The two men pushed open the door to the house. McCarthy grabbed defendant and a fight ensued. Defendant hit him repeatedly with his club until McCarthy momentarily lost consciousness. While hitting him, defendant demanded that he tell them where Covert had hid his money. Meanwhile, Covert was in the basement with two women when Snoop came down, ordered them to lie on the floor, and demanded that they tell him the money's location. Covert gave Snoop $50 or $60, but Snoop demanded "the rest of [Covert's] money." At that point, McCarthy came "flying" down the stairs, with defendant running behind him. McCarthy recalled being thrown down the stairs, and hearing, "where's the money?" Defendant then repeatedly hit Covert with the club, and defendant and Snoop dragged him up the stairs and threatened to kill him if he did not reveal the location of his money. Covert was then thrown down the stairs and heard defendant or Snoop say, "Shoot him, kill him, get it over with, let's go." Covert then heard one of men say that the women had "got away" and may call the police.

Defendant and Snoop fled. The woman who drove them to the house testified that, after defendant and Snoop came out of the house, she drove them to Detroit. She heard them say that they had "F-d up."

Defendant testified on his own behalf. He denied that an armed robbery was planned and denied taking anything from McCarthy's house. Defendant claimed that he and Snoop went to McCarthy's house to deliver drugs, and Snoop went inside to discuss the matter. When Snoop came out, he indicated that McCarthy planned to "stiff them." Defendant admitted that a fight broke out when they went inside, but insisted it was over the owed money. Defendant admitted that he hit McCarthy and threw him down the stairs, but he denied having a club or wearing a mask.

Defendant argues that the trial court erred by dismissing a juror for cause. We disagree. "We review for abuse of discretion a trial court's rulings on challenges for cause based on bias." *People v Williams*, 241 Mich App 519, 521; 616 NW2d 710 (2000). If a potential juror "is biased for or against a party or attorney;" "shows a state of mind that will prevent the person from rendering a just verdict, or has formed a positive opinion on the facts of the case or on what the outcome should be;" or "has opinions or conscientious scruples that would improperly influence the person's verdict . . . " then a challenge for cause is appropriate. MCR 2.511(D). MCR 2.511(D). "This Court defers to the trial court's superior ability to assess from a venireman's demeanor whether the person would be impartial." *Williams*, *supra* at 522.

The prospective juror explained that he was accused of child abuse approximately five years earlier, but no criminal charges were filed. The court asked him if there was "anything about that experience that in anyway would affect [his] ability to serve as a fair and impartial juror," to which the prospective juror replied, "It doesn't give me much confidence in the judicial system." The trial court asked if "that lack of confidence in the judicial system" would affect his ability to serve as a fair and impartial juror in this case, to which the prospective juror responded, "no." The prosecutor moved to dismiss the prospective juror for cause, and the trial court granted the motion. When defendant raised this issue in a motion for a new trial, the trial court explained that it granted the prosecutor's motion because "his demeanor, the body language, and the tone that he used" indicated that he could not fairly evaluate the case solely on the basis of the evidence. The court opined that the man would "not be a juror that either side would want to have." Giving due deference to the trial court's ability to assess the prospective juror's demeanor, the trial court did not abuse its discretion.

Next, defendant argues that the evidence was insufficient to sustain his conviction for conspiracy to commit armed robbery because there was no evidence of an agreement between him and "Snoop" to commit a robbery. We disagree. "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Applying this deferential standard of review, "a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). To prove the intent to combine with others for an unlawful purpose, it must be shown that the intent, including knowledge, was possessed by more than one person. *People v Blume*, 443 Mich 476, 482, 485; 505 NW2d 843 (1993). Direct proof of a conspiracy is

not essential; rather, proof may be derived from the circumstances, acts, and conduct of the parties, and inferences may be made because such evidence sheds light on the coconspirators' intentions. *People v Justice*, 454 Mich 334, 347; 562 NW2d 652 (1997).

The evidence supported an inference that defendant and Snoop jointly planned to commit the robbery. Before the robbery, defendant and Snoop were together, discussed visiting McCarthy's house, and arranged transportation there. The evidence indicates that defendant had a mask and club with him when they arrived. The two armed men forced their way inside and both asked about the location of "the money." After noticing that the two women had escaped, defendant and Snoop fled the scene together. The driver later heard one of them say that they had "F-d up." This evidence strongly supports the jury's finding that defendant participated in a concerted and preconceived effort to rob the men of the hidden money.

Defendant also argues that his trial counsel was ineffective for failing to ask more than two voir dire questions and for failing to exercise any peremptory challenges. We disagree.

> To establish a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that counsel's deficient performance prejudiced the defense. In order to demonstrate that counsel's performance was deficient, the defendant must show that it fell below an objective standard of reasonableness under prevailing professional norms. In so doing, the defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy. [*People v Riley (After Remand)*, 468 Mich 135, 140; 659 NW2d 611 (2003), citations omitted.]

The record discloses that the trial court's extensive voir dire provided defense counsel with a reasonable opportunity to ascertain whether any of the potential jurors were subject to challenge, and also provided counsel with sufficient information to make an independent assessment of bias. The court covered the salient concepts, including the presumption of innocence, burden of proof, and reasonable doubt, and elicited relevant information regarding the prospective jurors' backgrounds. Because defendant has not indicated any questions that defense counsel prejudicially neglected to ask, or identify any prospective juror whom defense counsel prejudicially neglected to challenge, defendant has not established a claim of ineffective assistance of counsel. *Id*.

Defendant also argues that the trial court erred in refusing to instruct the jury on the lesser included misdemeanor offense of aggravated assault, MCL 750.81a. We disagree. In *People v Cornell*, 466 Mich 335, 354-359; 646 NW2d 127 (2002), our Supreme Court concluded that a trial court may only instruct a jury on necessarily included lesser offenses, not cognate lesser offenses. Because aggravated assault contains the element of injury, MCL 750.81a, which is not an element of armed robbery, MCL 750.529, or assault with intent to rob while armed, MCL 750.89, the trial court's refusal to instruct the jury on that offense was not error. *Cornell*, *supra* at 355.

Affirmed.

/s/ Pat M. Donofrio
/s/ Peter D. O'Connell
/s/ Deborah A. Servitto