

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

UNPUBLISHED
June 5, 2014

v

ANDRIA LILES,

Defendant-Appellee.

No. 314766
Wayne Circuit Court
LC No. 12-004264-FC

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

ANDRIA LILES,

Defendant-Appellant.

No. 315100
Wayne Circuit Court
LC No. 12-004264-FC

Before: RIORDAN, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

Defendant was convicted of conspiracy to commit armed robbery, MCL 750.529, and was sentenced to 51 months to 10 years in prison. Both parties appeal as of right, and the appeals have been consolidated for our review. We affirm in part, reverse in part, and remand for resentencing.

I. FACTUAL BACKGROUND

A week prior to the armed robbery at issue in this case, an incident occurred at the Dollar General store in Detroit, Michigan, where defendant worked. Defendant was at work when three men—one of which was the father of defendant's child—entered the store right before closing. The supervisor on duty, suspecting something was afoot, approached the three men. The supervisor observed that one of the men had a gun. The three men completed their purchase and left the store. The supervisor—a retired police officer—testified that based on his experiences as

a police officer, he knew from the men's body language and behavior that they had been planning to rob the store.

Approximately a week later, defendant was working at the store when the shift manager noticed a distraught look on her face. The shift manager then saw two men, later identified as two of the men from the prior incident,¹ who were walking toward defendant. One of the men pointed a gun against defendant's body and asked her to empty the cash register. They also ordered the shift manager to open the store safe.

In the parking lot, the store supervisor was arriving at work when he unknowingly approached the entrance. He realized something was amiss when the automatic doors were not opening. At about the same time, the two perpetrators began to exit the store with the money. They ran into the store supervisor, who identified himself as a retired police officer. One of the perpetrators then reached for his handgun. The supervisor reached for his own firearm, and fired two fatal shots at the perpetrator.

When the police arrived, defendant gave the officer a description of the two men, but not their names. She claimed that she recognized one of the two men from the first incident. The police continued to interview witnesses and reviewed the store surveillance video. An officer observed that something seemed wrong on the video, as the employees did not appear frightened. Thus, the officer reinterviewed defendant.

Defendant ultimately confessed that she was involved in a plan—with the three men and another woman—to steal money from the store. She detailed that the original plan involved her being the lookout, that the other woman was a disgruntled former employee of the store, and that defendant was the intermediary between two of her coconspirators who did not trust each other. Defendant also admitted to lying to the police because she did not want to get in trouble. She further revealed that she had been text messaging two coconspirators, but had erased the messages from her phone.

Defendant was convicted of conspiracy to commit armed robbery, MCL 750.529, and was sentenced to 51 months to 10 years. Both parties now appeal.

II. SENTENCING

A. STANDARD OF REVIEW

In docket no. 314766, the prosecution contends that the trial court incorrectly scored Offense Variables (OVs) 3 and 19. The trial court's factual determinations during sentencing must be supported by a preponderance of the evidence and will be reviewed for clear error. *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013). "Clear error exists if the reviewing court is left with a definite and firm conviction that a mistake has been made." *People v Miller*, 482 Mich 540, 544; 759 NW2d 850 (2008) (quotation marks and citation omitted). Whether the

¹ The father of defendant's child was not present.

facts “are adequate to satisfy the scoring conditions prescribed by statute, i.e., the application of the facts to the law, is a question of statutory interpretation, which an appellate court reviews de novo.” *Hardy*, 494 Mich at 438.

B. OFFENSE VARIABLE 3

The prosecution first argues that the trial court clearly erred in assessing zero points under OV 3. OV 3—physical injury to a victim—is scored at 100 points if “[a] victim was killed” and the “death results from the commission of a crime and homicide is not the sentencing offense.” MCL 777.33(1)(a); MCL 777.33(2)(b). A sentencing court must ask “ ‘but for’ defendant’s commission of a crime, would his coperpetrator’s death have occurred?” *People v Laidler*, 491 Mich 339, 345; 817 NW2d 517 (2012) (quotation marks and citation omitted). Further, a victim is “a person harmed by the criminal actions of defendant[,]” and includes a coperpetrator. *Id.* at 349 (quotation marks omitted).

In the instant case, one of defendant’s coconspirators was shot and killed by an employee of the store during the robbery. Defendant worked at the store and was present during the robbery. She was involved in the initial planning of the robbery, which included her role as a lookout, although that did not come to fruition. The perpetrator who died was brought into the scheme through his connection with the father of defendant’s child. Defendant also admitted to acting as the intermediary between two of the coconspirators. By defendant’s own admission, they did not find each other trustworthy, and it appears likely they would not have continued through with conspiracy had defendant not served as their intermediary.²

Thus, but for defendant’s involvement in the planning and facilitation of the robbery, the coperpetrator would not have been present at the store when he was shot and killed by an employee. “That is, but for defendant’s commission of a crime, [her] coperpetrator would not have been placed in the position in which he was shot and killed.” *Laidler*, 491 Mich at 345. Furthermore, while the store employee actually shot the perpetrator, the Michigan Supreme Court has emphasized that “[t]here is nothing in MCL 777.33 that suggests that there may be only a single cause of a death.” *Id.* at 346.

Defendant, however, posits that because the victim died during the armed robbery, and defendant only was convicted of conspiracy to commit armed robbery, which was complete upon formation of the agreement, the trial court was not permitted to look beyond the sentencing offense. But the defendant fails to recognize that while the crime of conspiracy is complete when the illegal agreement is reached, the conspiracy “continues until the common enterprise has been fully completed, abandoned, or terminated.” *People v Bushard*, 444 Mich 384, 394; 508 NW2d 745 (1993); see also *People v Denio*, 454 Mich 691, 710; 564 NW2d 13 (1997) (quotation marks and citation omitted) (“The crime of conspiracy is a continuing offense” and “is presumed to continue until there is affirmative evidence of abandonment, withdrawal, disavowal, or defeat of the object of the conspiracy.”). Thus, defendant’s involvement in the conspiracy was ongoing,

² This is especially true considering one of the individuals—the disgruntled former employee—led in planning the robbery.

as there was no evidence of abandonment, withdrawal, disavowal, or defeat. *Bushard*, 444 Mich at 394. Given this continuing nature of the conspiracy, defendant's contribution to the coconspirator's death becomes even more evident.

Accordingly, we agree with the prosecution that the trial court erred in scoring OV 3 at zero points instead of 100 points.

C. OFFENSE VARIABLE 19

In docket no. 314766, the prosecution also challenges the trial court's scoring of OV 19. Pursuant to MCL 777.49(c), 10 points is justified under OV 19 if "[t]he offender otherwise interfered with or attempted to interfere with the administration of justice." As our Supreme Court has explained, "because the circumstances described in OV 19 expressly include events occurring after the completion of the sentencing offense, scoring OV 19 necessarily is not limited to consideration of the sentencing offense." *People v Smith*, 488 Mich 193, 195; 793 NW2d 666 (2010).

"Interfering or attempting to interfere with the administration of justice includes acts that constitute obstruction of justice, but is not limited to such acts." *People v Ericksen*, 288 Mich App 192, 204; 793 NW2d 120 (2010). "Lying to law enforcement officers or private persons who are authorized to investigate a crime may constitute interference with their investigatory function, which is interference with the administration of justice under MCL 777.49(c)." *People v Portellos*, 298 Mich App 431, 450; 827 NW2d 725 (2012). Attempting to dispose of evidence also warrants a 10-point score under OV 19. *Ericksen*, 288 Mich App at 204 (defendant's "actions ultimately constituted fabrications that were self-serving attempts at deception obviously aimed at leading police investigators astray or even diverting suspicion onto others and away from him.").

Here, defendant initially spoke with the police after the robbery, but only admitted to recognizing one of the two men from the first robbery attempt. However, when interviewed again, defendant admitted to her involvement in the scheme and the identity of her coconspirators. She confessed to lying because she "didn't want to get in trouble." She also admitted that she had been text messaging two coconspirators but had deleted the messages while at work.

Thus, defendant lied to the detective when denying her association with the two men involved in the robbery, and consequently interfered with the police department's investigation of the robbery. *Portellos*, 298 Mich App at 450. She further interfered with the administration of justice when she erased text messages between herself and her coconspirators. As noted above, attempts to hide evidence support a score of 10 points under OV 19. *Ericksen*, 288 Mich App at 203-204. Therefore, the trial court erred in scoring OV 19 at zero points.

Because these scoring changes would affect defendant's sentencing range, resentencing is required. *People v Jackson*, 487 Mich 783, 794; 790 NW2d 340 (2010).

III. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

In docket no. 315100, defendant contends there was insufficient evidence to sustain her conviction. “Due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact to conclude that the defendant is guilty beyond a reasonable doubt.” *People v Tombs*, 260 Mich App 201, 206-207; 679 NW2d 77 (2003). We review “de novo a challenge on appeal to the sufficiency of the evidence.” *Ericksen*, 288 Mich App at 195. “In determining whether the prosecutor has presented sufficient evidence to sustain a conviction, an appellate court is required to take the evidence in the light most favorable to the prosecutor” to ascertain “whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt.” *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010) (quotation marks and citations omitted). “All conflicts in the evidence must be resolved in favor of the prosecution and we will not interfere with the jury’s determinations regarding the weight of the evidence and the credibility of the witnesses.” *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008).

B. ANALYSIS

A criminal conspiracy is a partnership for criminal purposes, and requires a specific intent to combine with others to accomplish an illegal objective. *People v Blume*, 443 Mich 476, 481; 505 NW2d 843 (1993). Because of the clandestine nature of criminal conspiracies, “direct proof of the conspiracy is not essential; instead, proof may be derived from the circumstances, acts, and conduct of the parties.” *People v Justice*, 454 Mich 334, 347; 562 NW2d 652 (1997). Additionally, “[i]t is not necessary to a conviction for conspiracy that each defendant have knowledge of all its ramifications. Nor is it necessary that one conspirator should know all of the conspirators or participate in all of the objects of the conspiracy.” *People v Hunter*, 466 Mich 1, 7; 643 NW2d 218 (2002) (quotation marks and citations omitted). “[A]lthough the government need not prove commission of the substantive offense or even that the conspirators knew all the details of the conspiracy, it must prove that the intended future conduct they . . . agreed upon includes all the elements of the substantive crime.” *People v Mass*, 464 Mich 615, 629 n 19; 628 NW2d 540 (2001) (quotation marks, citations, and brackets omitted).

Further, the elements of armed robbery are:

(1) the defendant, in the course of committing a larceny of any money or other property that may be the subject of a larceny, used force or violence against any person who was present or assaulted or put the person in fear, and (2) the defendant, in the course of committing the larceny, either possessed a dangerous weapon, possessed an article used or fashioned in a manner to lead any person present to reasonably believe that the article was a dangerous weapon, or represented orally or otherwise that he or she was in possession of a dangerous weapon. [*People v Chambers*, 277 Mich App 1, 7; 742 NW2d 610 (2007).]

Defendant contends that her conviction of conspiracy to commit armed robbery cannot stand because there was insufficient evidence of an agreement to use force or violence or to use a weapon. However, evidence was submitted of the initial armed robbery attempt, which occurred approximately a week before the incident that led to defendant’s armed robbery conviction. It was perpetrated when employees were present, while defendant was at work, and with one of the coconspirators carrying a firearm. Thus, a reasonable jury could have concluded that defendant was aware of and agreed with the plan to commit an armed robbery. See *Justice*, 454 Mich at

347 (proof of conspiracy may be derived from the circumstances, acts, and the conduct of defendant).

Moreover, as a police officer at trial testified, the video of the actual armed robbery revealed that defendant was acting casually and unafraid of her coconspirators even though they were ostensibly holding her, as well as another employee, at gunpoint. Defendant was in continuing contact with the coconspirators on the day of the robbery, and a reasonable jury could infer that the text messages she confessed to deleting contained pertinent information of the planned armed robbery.

Therefore, we find that there was sufficient evidence that defendant conspired to commit armed robbery.

IV. CONCLUSION

While we affirm defendant's conviction, we remand for resentencing based on the trial court's erroneous scoring of OVs 3 and 19. We affirm in part, reverse in part, and remand for resentencing. We do not retain jurisdiction.

/s/ Michael J. Riordan
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood