STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 11, 2009
v	No. 285481 Wayne Circuit Court
GRADY JEROME ELERSON, Defendant-Appellant.	LC No. 08-000658-FH

Before: Owens, P. J., and Servitto, and Gleicher, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of unarmed robbery, MCL 750.530. Defendant was sentenced to 5 to 15 years of imprisonment. We affirm.

Defendant claims on appeal that there was insufficient evidence for the trial court to have determined that each of the elements of unarmed robbery was proven beyond a reasonable doubt. We disagree.

A challenge to the sufficiency of the evidence in a bench trial is reviewed "de novo and in a light most favorable to the prosecution to determine whether the trial court could have found the essential elements of the crime were proved beyond a reasonable doubt." *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). "All conflicts with regard to the evidence must be resolved in favor of the prosecution. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005) (internal citations omitted).

On December 22, 2007, 85-year-old Rose Jackson was shopping at the CVS Pharmacy located at the corner of Joy Road and Merriman Road in Westland, Michigan. As she was walking away from the store, defendant pulled up in a black vehicle and grabbed Jackson's purse. Jackson resisted, leaned into the vehicle and shouted for help. As Jackson held onto the purse and leaned into the vehicle, the vehicle drove away, pulling Jackson along for approximately three feet before she lost her grip and fell to the ground. The struggle and fall caused Jackson to injure her arm and both knees.

"A person who, in the course of committing a larceny of any money or other property that may be the subject of larceny, uses force or violence against any person who is present, or

who assaults or puts the person in fear," is guilty of unarmed robbery. MCL 750.530(1); *People v Chambers*, 277 Mich App 1, 7; 742 NW2d 610 (2007).

There is no dispute that there was sufficient evidence to support a finding beyond a reasonable doubt that a larceny occurred. Jackson had her purse involuntarily taken from her as she left the CVS Pharmacy. Instead, defendant challenges the sufficiency of the evidence that linked him to the larceny and also challenges the sufficiency of the evidence that showed force was used during the commission of the larceny.

First, there was sufficient evidence that supported the finding beyond a reasonable doubt that it was defendant who committed the larceny. An eyewitness, Jody Miller, identified defendant as the person who took Jackson's purse. Furthermore, Miller saw the vehicle that defendant was driving and provided an overall description to police: a black man wearing all black clothing who was driving a black car with no license plate. Shortly after giving her statement to police, the Redford police stopped defendant, a black man, driving a black vehicle with no license plate, on Joy Road a few miles away from the CVS store. Miller's description also included the fact that the driver was wearing a black coat and a dark knit cap. The police recovered a black, puffy, winter coat and a dark knit cap from defendant's possession. Furthermore, Jackson's stolen belongings were found in defendant's possession.

In making the argument that there was insufficient evidence linking him to the crime, defendant relies on the fact that he received a "favorable instruction" regarding a missing prosecution witness. While the "favorable instruction" allows the fact-finder to infer that the witness would have supplied evidence unfavorable to the prosecution,[1] it does not dictate the outcome of this appeal. Even though the trial court and this Court are to assume that this missing witness' testimony would have differed from the eyewitness testimony of Miller and Jackson, and would have been unfavorable to the prosecution, any favorable inference that was gained by the instruction is effectively negated on appeal since "[a]ll conflicts with regard to the evidence must be resolved in favor of the prosecution." *Wilkens, supra* at 738. Therefore, by viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence for the trial court to determine beyond a reasonable doubt that it was defendant who committed this crime.

Second, there is sufficient evidence to support a finding that the crime committed was unarmed robbery and not merely larceny from a person. The only difference between the two crimes is the presence of a "force" element to elevate the crime to an unarmed robbery. *People v Douglas*, 191 Mich App 660, 664; 478 NW2d 737 (1991); see *People v Hicks*, 259 Mich App 518, 531-532; 675 NW2d 599 (2003). The question becomes whether there was sufficient evidence to show that force was used in the course of committing the larceny.

[1] "[I]f the prosecutor fails to call a listed witness and has failed to [properly] delete that witness from its witness list, . . . it may nonetheless be appropriate for the trial court to read CJI2d 5.12." *People v Cook*, 266 Mich App 290, 293 n 4; 702 NW2d 613 (2005). CJI2d 5.12 states, "*[State name of witness]* is a missing witness whose appearance was the responsibility of the prosecution. You may infer that this witness's testimony would have been unfavorable to the prosecution's case."

In *Hicks*, the victim had her purse over her shoulder when the defendant grabbed the purse from behind. *Hicks*, *supra* at 520. The victim "reacted by moving forward, and the tugging grew stronger, forcing her backward. She struggled to hold on to her purse, but the perpetrator wrestled the purse away from her and ran down [the street]." *Id.* The *Hicks* Court held that this struggle over the purse was sufficient to meet the force requirement for the unarmed robbery statute. *Id.* at 530-531.

The *Hicks* facts are similar to the facts in the instant case. Here, Jackson was holding onto her purse when defendant drove up in his vehicle and grabbed at the purse. Miller testified that she saw Jackson "hanging on [to something] and leaning into a car." A reasonable inference from this testimony is that while Jackson was pulled partially into the vehicle, she was struggling and resisting defendant's attempts at getting the purse. Pursuant to *Hicks*, this struggle would be enough to satisfy the force element by itself. However, Miller also testified that while this struggle occurred, the vehicle was moving, dragging Jackson along for approximately three feet until Jackson lost her grip and fell to the ground. Dragging an 85-year-old woman involves the use of some amount of force, regardless of how light or frail she may be. Thus, not only was there evidence of a struggle between defendant and Jackson, but there was also evidence that showed defendant used force to drag Jackson alongside his vehicle for several feet before she fell to the ground. In any event, there was sufficient evidence to show beyond a reasonable doubt that force was used during the course of a larceny.

Accordingly, after viewing all of the evidence in a light most favorable to the prosecution, there was sufficient evidence for the trial court to have determined beyond a reasonable doubt that it was defendant who used force during the commission of this larceny and thereby committed unarmed robbery.

Affirmed.

/s/ Donald S. Owens
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher