

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALFONZO L. NEWELL,

Defendant-Appellant.

UNPUBLISHED

May 15, 1998

No. 196424

Detroit Recorder's Court

LC No. 95-013462

Before: Markey, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

Defendant was charged with armed robbery, MCL 750.530; MSA 28.798. Following a bench trial, defendant was convicted of the lesser included offense of larceny from a person, MCL 750.375; MSA 28.589. The trial court sentenced defendant to 18 to 120 months' imprisonment. Defendant appeals as of right. We affirm.

The eighty-year-old victim testified that after obtaining money from a bank, he encountered a black male in his twenties who took his money and then "pushed and shoved" him to the ground.¹ The victim said that he had counted the money before he left the bank and put the envelope containing the cash inside his overcoat pocket. The victim further testified that "evidently he knew where it [the money] was" because the perpetrator immediately pulled the envelope out of the victim's coat pocket. Although the victim testified that he saw defendant inside the bank, he was unable to identify defendant as the perpetrator at a lineup or at defendant's preliminary examination. Instead, the victim identified a man who was sitting in the courtroom before the witnesses were sequestered at the preliminary examination.

Michael Travis testified that he arrived at the bank with defendant and some other men in a van driven by Danny Rivers. Travis testified that he saw defendant enter the bank. Shortly thereafter, Travis saw the victim leave the bank and saw defendant walk toward the victim. Travis then saw defendant with no one else around standing within "arms-length" of the victim and saw the victim "go down real quick." Although Travis never saw defendant touch the victim or steal his money, it appeared to him as if defendant were "tussling with" and robbing the victim.

Rivers testified that he saw defendant come out of the bank alone and walk to the victim's truck. Although he admitted that he never saw defendant touch or rob the victim, he saw defendant "getting up" with his hand near the ground. He then saw defendant walk off the parking lot and start running. As Rivers was leaving the lot, he saw the victim "coming up from the ground and picking up his hat" from an area about five or six feet from where he had seen defendant getting up.²

On appeal, defendant first argues that there was insufficient evidence to support his conviction for larceny from the person. Specifically, defendant claims that the evidence is insufficient to establish his identity as the perpetrator. We disagree.

In reviewing the sufficiency of the evidence in a bench trial, we must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). The elements of larceny are: (1) the taking (2) and carrying away (3) of the personal property of another (4) with felonious intent, and (5) without the owner's consent. *People v Gimotty*, 216 Mich App 254, 257-258; 549 NW2d 39 (1996). Larceny from the person requires the additional element that property be taken from a person or his immediate presence. *People v Adams*, 128 Mich App 25, 32; 339 NW2d 687 (1983). Circumstantial evidence and reasonable inferences drawn therefrom may constitute satisfactory proof of the elements of the offense, including identity. See *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996); *Hutner, supra*.

Although the victim did not identify defendant as the perpetrator, two witnesses testified that they saw defendant approach the victim with no one else around and that shortly thereafter, they saw the victim on the ground and defendant quickly leaving the area. The victim testified that the perpetrator took his money. Viewing this circumstantial evidence in a light most favorable to the prosecution, we hold that it is sufficient for a factfinder to conclude that defendant was guilty of larceny from a person beyond a reasonable doubt. See *People v Bottany*, 43 Mich App 375, 377-378; 204 NW2d 230 (1972) (identity of the defendant as the person who committed a crime may be established beyond reasonable doubt by segments of circumstantial proof in combination, even if each element standing alone might not be sufficient).

Next, defendant argues that the verdict contravenes the great weight of the evidence. A verdict may be vacated and a new trial granted only when, after reviewing the whole body of evidence, "it 'does not find reasonable support in the evidence, but is more likely to be attributed to causes outside the record such as passion, prejudice, sympathy, or some extraneous influence'." *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993), quoting *Nagi v Detroit United Railway*, 231 Mich 452, 457; 204 NW 126 (1925).

After a thorough review, we hold that defendant's conviction does not contravene the great weight of the evidence. As stated above, we find there is substantial circumstantial evidence implicating defendant as the perpetrator. Although the victim never identified defendant as the perpetrator and the two witnesses were initially suspects for the crime, the trial court recognized these facts and expressly found their testimony credible. This Court will not disturb a trial court's credibility determination if it

appears from the record that the trial court was aware of the issues

and correctly applied the law. See *People v Reeves*, 222 Mich App 32, 35; 564 NW2d 476 (1997). Because the trial court was in the best position to make credibility determinations, *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992), we find that its verdict is not manifestly against the great weight of the evidence.

We affirm.

/s/ Kathleen Jansen

/s/ Michael J. Kelly

/s/ Jane E. Markey

¹ At trial, the trial court admitted the victim's preliminary exam testimony on the ground that the victim was ill and "unavailable" to testify pursuant to court rule.

² Neither Travis nor Rivers entered the bank; rather, both men testified that they remained in the van while the others went into the bank with defendant.