

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS LEE STICKLER,

Defendant-Appellant.

UNPUBLISHED

June 9, 2000

No. 214590

St. Clair Circuit Court

LC No. 98-000478-FH

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

PER CURIAM.

Following a jury trial, defendant was convicted of unarmed robbery, MCL 750.530; MSA 28.798. He was sentenced to 270 days in jail and two years' probation. Defendant appeals as of right. We affirm.

Defendant argues that under either a sufficiency of the evidence standard or the great weight of the evidence standard, his conviction should be vacated and his case remanded for entry of a judgment of acquittal or, in the alternative, a new trial should be ordered. We disagree.

Due process requires that the prosecution introduce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). When determining whether sufficient evidence has been presented to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Id.*; *People v Godbold*, 230 Mich App 508, 522; 585 NW2d 13 (1998). This Court reviews a trial court's determination that a verdict was not against the great weight of the evidence for an abuse of discretion. *People v Brown*, 239 Mich App 735, 744-745; ___ NW2d ___ (2000). "[A] trial court may grant a motion for a new trial based on the great weight of the evidence only if the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand." *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998).

Michigan's unarmed robbery statute provides:

Any person who shall, by force and violence, or by assault or putting in fear, feloniously rob, steal and take from the person of another, or in his presence, any money or other property which may be the subject of larceny, such robber not being armed with a dangerous weapon, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 15 years. [MCL 750.530; MSA 28.798.]

To be convicted of unarmed robbery, the prosecution is required to prove each of the following essential elements: (1) a felonious taking of property from another, (2) by force, violence, or assault or putting in fear, and (3) being unarmed. *Id.*; see *People v Reeves*, 458 Mich 236, 242; 580 NW2d 433 (1998); *People v Chandler*, 201 Mich App 611, 614; 506 NW2d 882 (1993).

Defendant's argument on appeal is narrow. Relying on *People v Tinsley*, 176 Mich App 119; 439 NW2d 313 (1989), defendant contends that a "taking" could not have occurred, and therefore defendant could not have been found guilty of unarmed robbery, because he had not reached a temporary place of safety before the Kmart store loss control employees detained him. Defendant's reliance is misplaced.

Although Michigan views robbery as a continuous offense that is not complete until the perpetrator reaches a place of temporary safety, *Tinsley*, *supra* at 121-122, that is not to say that a taking is not complete until the perpetrator has accomplished his escape. Rather, "the use of force or intimidation in retaining the property taken or in attempting to escape rather than in taking the property itself is sufficient to supply the element of force or coercion essential to the offense of robbery." *Id.* Contrary to defendant's reasoning, we are convinced that the *Tinsley* line of cases merely stands for the proposition that a robbery may begin with a taking and end after the perpetrator reaches a place of temporary safety, for purposes of determining the crime(s) to be charged, but that the essential elements of the robbery may be completed before the escape. See *People v Turner*, 120 Mich App 23; 328 NW2d 5 (1982);¹ see also *People v Gimotty*, 216 Mich App 254; 549 NW2d 39 (1996). In other

¹ In *Turner*, *supra* at 28, 29, this Court explained:

[R]obbery is . . . a continuous offense: it is not complete until the perpetrators reach temporary safety. As such, while the essential elements were completed, the offense continued during the escape. The evidence is, therefore, sufficient to convict [defendant] of armed robbery as an aider and abettor because she helped hide the money during the escape.

* * *

Superficially this reasoning seems to be contradictory. On the one hand, a criminal is guilty of a completed robbery and not merely of an attempt if he moves the stolen goods a short distance. On the other hand, the crime is continuous and not completed until the parties have reached temporary safety. Thus, a person who aids during an escape is guilty as an aider and abettor although the crime has apparently

words, reaching a place of temporary safety may extend the offense enhancement period, but is not an essential element of any specific robbery crime. See *Turner, supra*. Thus, we conclude that it was unnecessary for defendant to have reached a place of temporary safety to be charged with and convicted of unarmed robbery.

With regard to the sufficiency of the evidence, we find defendant's argument without merit. Viewed in a light most favorable to the prosecution, the evidence that defendant took a pack of cigarettes from a display case inside the Kmart store, put it in his pocket, left the store without paying for the cigarettes, and when confronted by store security struck one of them several times and attempted to flee established facts from which a rational trier of fact could find that the essential elements of unarmed robbery were proven beyond a reasonable doubt. See *Johnson, supra*. Likewise, on this record, there is no credible argument that the great weight of the evidence presented at trial militated against defendant's conviction for unarmed robbery. We are convinced that the evidence in the present case did not preponderate so heavily against defendant's guilty verdict that it would be a miscarriage of justice to allow the verdict to stand, and thus the trial court did not abuse its discretion in denying defendant's motion for new trial. *Brown, supra*.

Affirmed.

/s/ Roman S. Gribbs

/s/ Joel P. Hoekstra

/s/ Jane E. Markey

concluded. Although these two legal principles may seem to create a double-edged sword, they do not. Just because a completed escape is not a necessary element of the offense does not preclude it from being a part of it. [Citations omitted.]