

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARBRY W. MATTHEWS,

Defendant-Appellant.

UNPUBLISHED

June 18, 2002

No. 232233

Wayne Circuit Court

LC No. 00-007433

Before: Holbrook, Jr., P.J., and Gage and Meter, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of two counts of unarmed robbery, MCL 750.530, and one count of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(c) (during commission of a felony). The trial court sentenced defendant to concurrent terms of five to fifteen years' imprisonment for the robbery convictions, and ten to twenty years' imprisonment for the CSC I conviction. Defendant appeals as of right. We affirm.

Defendant contends that the prosecution failed to present sufficient evidence to support his convictions. In reviewing a challenge to the sufficiency of the evidence, we consider the evidence presented in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). This Court will not interfere with the fact finder's role of determining the evidence's weight or witnesses' credibility. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Defendant asserts that the prosecution failed to prove beyond a reasonable doubt that he took another's property, or that he used force, violence or fear to take property from the victims. The elements of unarmed robbery are: (1) a felonious taking of property from another, (2) by force, violence, assault or putting in fear, and (3) being unarmed. MCL 750.530; *People v Johnson*, 206 Mich App 122, 125-126; 520 NW2d 672 (1994). Although the two victims provided conflicting testimony regarding whether defendant or his codefendant took various items of the victims' property, when the evidence is viewed in the light most favorable to the prosecution and all credibility issues are resolved in favor of the verdict, we conclude that the trial court could reasonably have found that defendant took property from the victims. *Johnson, supra*, 460 Mich at 723.

The prosecution also produced sufficient evidence to allow a reasonable conclusion that both victims feared injury if they resisted the taking of their property. The prosecution was not required to demonstrate that defendant had a larcenous intent at the time he committed the act that induced the victims' fear. *People v Hearn*, 159 Mich App 275, 282; 406 NW2d 211 (1987). Where a person is induced by fear to part with property, the test whether a robbery has been committed is whether "the party robbed has a reasonable belief that he may suffer injury unless he complies with the demand." Thus, the test is objective and from the victim's perspective. *Id.* at 281.

In this case, the evidence demonstrated that defendant acted in concert with his codefendant, who had repeatedly beaten the male victim and threatened him with a knife. The female victim testified that defendant sexually assaulted her before and after taking \$40 from her. From this testimony, the trial court could have found that the victims reasonably feared injury if they failed to comply with defendant's demands. Accordingly, we conclude that sufficient evidence existed to support defendant's unarmed robbery convictions.

Defendant also argues that the prosecution produced insufficient evidence to support his CSC I conviction because the only evidence of penetration consisted of the female victim's allegations, unsupported by medical or other corroborating evidence.¹ However, defendant's denial that penetration occurred merely created a credibility contest between the two witnesses, which we must resolve in favor of the verdict. *Nowack, supra* at 400. We therefore conclude that the prosecution proved the element of penetration beyond a reasonable doubt.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Hilda R. Gage
/s/ Patrick M. Meter

¹ MCL 750.520b(1)(c) defines CSC I as follows:

(1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

* * *

(c) Sexual penetration occurs under circumstances involving the commission of any other felony.