

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS FITZGERALD YOUNG,

Defendant-Appellant.

UNPUBLISHED

May 13, 2008

No. 275754

Wayne Circuit Court

LC No. 06-007368-01

Before: Donofrio, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree home invasion, MCL 750.110a(2), and unarmed robbery, MCL 750.530. Because the prosecutor presented evidence from which a reasonable jury could find that the elements of the crime were proved beyond a reasonable doubt, and defendant cannot show that his asserted error concerning collateral evidence affected his substantial rights, we affirm.

Defendant's convictions arise from an incident that occurred on the night of April 19, 2006, at the home of Christopher and Bobbie Hurst. The police had been conducting surveillance of defendant for several hours that day. During that time, police observed him scouting the parking lots of local businesses in a white Escort. On one occasion, he followed an elderly woman from a store to her house, but drove off when the woman's neighbor came outside. Later, defendant drove to a drug store and sat in the parking lot, watching people going in and out. Eventually, defendant went into the drug store, followed Bobbie Hurst out, returned to his car, and followed her to her home. When she pulled into her driveway, defendant drove by, turned off his headlights, and parked in front of a neighboring house.

Bobbie Hurst testified that she came home and parked in the driveway. She looked in her rearview mirror and saw a "little white car" go by. As she was walking to the back door, she thought she noticed a couple of flashes of light but did not see anyone. She entered the house and walked into the kitchen. At that point, defendant left his car and sprinted toward the back porch. Hurst saw someone coming through the backyard and thought it was her son. When she realized it was not her son, she went to lock the screen door and then close the entry door. Before she could do so, defendant forced his way inside. He pushed Hurst, who was holding her purse, back up against the stove. Defendant told her to "hand it over" and tried to take the purse from her. Hurst tried to push defendant away while calling for her husband.

Christopher Hurst entered the kitchen and found defendant fighting with Bobbie for possession of her purse. Bobbie testified that defendant “had his hands down on my purse,” which fell to the floor. Christopher grabbed defendant around the waist and threw him to the floor. They fought as defendant made his way out the back door. Defendant got away and ran for his car. One officer ran after him while another officer, who was parked beyond defendant’s car, ran toward him. Defendant veered off, ran to a house, and jumped the fence. A K-9 unit came to assist and tracked defendant to an open garage, where he was found hiding behind a piece of drywall.

On appeal, defendant first contends that the evidence was insufficient to support the robbery conviction because there was no evidence that he actually took any property from the Hursts. In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing the evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). It is for the trier of fact to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The unarmed robbery statute provides in part: “[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 a felony” MCL 750.530(1). A larceny is the taking and movement of another person’s money or property with the intent to steal it. *People v Perkins*, 262 Mich App 267, 271-272; 686 NW2d 237 (2004). The phrase “in the course of committing a larceny” is statutorily defined as including “acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property.” MCL 750.530(2).

The evidence showed that defendant used force or violence against Bobbie Hurst, pushing her up against a stove. The evidence also showed that he did this in the course of committing a larceny. He fought with her for her purse while demanding that she “hand it over.” Further, the evidence permits a reasonable inference that defendant took the purse away from Bobbie but lost it when he was tackled by Christopher. The evidence was sufficient to establish an unarmed robbery.

Defendant next contends that the trial court erred in admitting evidence that he engaged in narcotics transactions before committing the charged offenses because it was not admissible under MRE 404(b). Defendant objected to this evidence on a different ground and, therefore, this issue is not preserved for appeal. *People v Bauder*, 269 Mich App 174, 177-178; 712 NW2d 506 (2005). Therefore, we review this issue for plain error affecting defendant’s substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Even if the evidence should have been excluded, defendant cannot show that the error affected his substantial rights given the other evidence showing that the police watched defendant commit the home invasion, the Hursts' testimony concerning defendant's actions inside their house, and that the police followed defendant from the house to the garage where he was taken into custody. To the extent defendant contends that the trial court erred when it failed to give a cautionary instruction regarding the narcotics transactions and other evidence to which an objection was sustained, his claim of error has been waived. Defense counsel expressed satisfaction with the instructions given by the court and stated that he had no corrections, additions, or deletions to offer. *People v Matuszak*, 263 Mich App 42, 57; 687 NW2d 342 (2004); *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002).

Affirmed.

/s/ Pat M. Donofrio

/s/ David H. Sawyer

/s/ William B. Murphy