STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 18, 2010
v	No. 290874 Wayne Circuit Court
DARNELL EARL TATE, Defendant-Appellant.	LC No. 08-014025-FC

Before: MURPHY, C.J., and K. F. KELLY and STEPHENS, JJ.

PER CURIAM.

After a bench trial, defendant was convicted of carjacking, MCL 750.529a; unarmed robbery, MCL 750.530; unlawful driving away an automobile, MCL 750.413; and, assault with a dangerous weapon, MCL 750.82. We affirm.[1]

Defendant's only argument on appeal is that the prosecution failed to present sufficient evidence to support his carjacking and unarmed robbery convictions. We disagree. We review insufficiency of the evidence claims de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In doing so, we must "view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

The carjacking statute, MCL 750.529a, provides in relevant part:

> (1) A person who *in the course of committing a larceny of a motor vehicle* uses force or violence or the threat of force or violence, or who puts in fear any operator, passenger, or person in lawful possession of the motor vehicle, *or any person lawfully attempting to recover the motor vehicle*, is guilty of carjacking, a felony punishable by imprisonment for life or for any term of years.

[1] This appeal has been decided without oral argument pursuant to MCR 7.214(E).

> (2) As used in this section, *"in the course of committing a larceny of a motor vehicle" includes 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 motor vehicle.* [Emphasis added.]

Here, the victim parked her vehicle at a gas station and left her keys in the ignition as she approached the storefront. As she reached the front door of the gas station, she saw defendant get into her car and shut its door. Before defendant could drive away, the victim ran to the driver's door, pounded on the window, and grabbed the door handle in an attempt to open the locked door. This was a lawful attempt by the victim to recover her vehicle. By defendant's own admission, he was in the process of stealing the vehicle. When defendant drove away, the abrupt forward movement of the vehicle ripped the door handle from the victim's hand and bloodied her knuckles. This was an application of force or violence by defendant. It occurred during the attempt by the owner to recover her vehicle and during defendant's flight or attempted flight after the theft was committed, or in an attempt to retain possession of the stolen vehicle. Therefore, the evidence, viewed in a light most favorable to the prosecution, clearly established beyond a reasonable doubt that defendant committed a carjacking.

As noted, defendant also asserts that the evidence was insufficient to support his armed robbery conviction. We cannot agree. The unarmed robbery statute, MCL 750.530, provides:

> (1) 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 punishable by imprisonment for not more than 15 years.
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> (2) *As used in this section, "in the course of committing a larceny" includes 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.* [Emphasis added.]

Here, the evidence showed that the victim's personal possessions were in her vehicle, and defendant drove away from the gas station while the victim was attempting to open her vehicle's door. As previously described, defendant's act of abruptly driving the vehicle away while the victim's hand was on the door handle trying to open the door resulted in her being knocked backwards and her knuckles being bloodied; it also prevented her efforts to recover her property. Thus, defendant's use of force constituted "an attempt to retain possession of [the victim's] property." MCL 750.530(2). Therefore, application of the clear language of the statute to the evidence leads inevitably to the conclusion that defendant committed unarmed robbery.

Defendant, however, argues that the larceny of the victim's personal possessions was completed by the time she attempted to recover her vehicle, and therefore, under our Supreme Court's decision in *People v Randolph*, 466 Mich 532; 648 NW2d 164 (2002), the prosecution could not prove the unarmed robbery charge. The *Randolph* Court stated that "a larceny is complete when the taking occurs" and rejected the "transactional approach" that had been adopted by several Court of Appeals' decisions. *Id*. at 546. The *Randolph* Court held:

> [A]t common law, a robbery required that the force, violence, or putting in fear occur before or contemporaneous with the larcenous taking. If the violence, force, or putting in fear occurred after the taking, the crime was not robbery, but rather larceny and perhaps assault. Hence, the "transactional approach" espoused by the Court of Appeals is without pedigree in our law and must be abandoned. [*Id.*]

In response to the *Randolph* decision, the Legislature amended the unarmed robbery statute in 2004 specifically to transform the crime into a "transactional" offense. 2004 PA 128. The amended statute provides that the statutory language "'in the course of committing a larceny' includes 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). Thus, defendant's argument that he only committed larceny because robbery is not a "transactional" crime is without merit.

The evidence was sufficient, when considered in a light most favorable to the prosecution, to establish beyond a reasonable doubt that defendant was guilty of carjacking and unarmed robbery. Thus, defendant is not entitled to the relief requested on appeal.

Affirmed.

/s/ William B. Murphy
/s/ Kirsten Frank Kelly
/s/ Cynthia Diane Stephens