

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT CHARLES HOULE,

Defendant-Appellant.

UNPUBLISHED

June 17, 2010

No. 289436

Oakland Circuit Court

LC No. 2008-222591-FH

Before: ZAHRA, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

A jury convicted defendant of unarmed robbery, MCL 750.530, and the trial court sentenced him as an habitual offender, fourth offense, MCL 769.12, to a prison term of five to thirty years. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case arises from the theft of the victim's purse while she was loading groceries into her car in a parking lot in West Bloomfield. Defendant first asserts that the prosecution failed to present sufficient evidence to support his conviction. When reviewing the sufficiency of evidence in a criminal case, a reviewing court must view the evidence of record in the light most favorable to the prosecution to determine whether a rational trier of fact could find that each element of the crime was proved beyond a reasonable doubt. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).¹ Review is de novo. *Id.*

Conviction of unarmed robbery requires proof that the perpetrator used force or violence, or assaults or fear, in the course of committing a larceny. MCL 750.530(1). Defendant argues that the evidence was insufficient to support a finding that defendant used force in taking the

¹ We reject defendant's argument that a reviewing court's obligation to view the evidence in the light most favorable to the prosecution applies to factual conflicts only. Defendant cites *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992), for this proposition. But *Wolfe* does not in fact instruct that a jury must believe, or a reviewing court accept as true, even uncontroverted defense testimony. That case instead simply advises that where there are evidentiary conflicts, they must, for purposes of sufficiency review, be resolved in favor of the prosecution. *Id.*

purse. We disagree. The victim testified that she was loading groceries into her car when defendant pulled up in a car and asked for directions. According to the victim, defendant then left his car, grabbed her arm, took her purse from inside her car, and shoved her. An onlooker testified that defendant gave the victim “a shove” and took something. The combination of grabbing the victim’s arm and shoving her satisfies the element of force. Moreover, the victim testified that she immediately felt intense fear when defendant first physically contacted her, which evidence suggests that this element of the crime was alternatively satisfied by having assaulted the victim and causing her to feel fear.

Defendant next argues that the following portion of the prosecuting attorney’s opening statement created overwhelming and unfair prejudice, thus denying defendant a fair trial:

[T]his person who sits here before you today has a problem. His problem is he is a heavy user of crack Cocaine. Those are his words to the police when he was arrested, heavy user of crack Cocaine.

If the defendant supplied his crack Cocaine by working hard or was independently wealthy and minding his own business when he did these things, he probably wouldn’t be sitting here today.

But that’s not how this defendant goes about getting his funds to pay for his heavy use of crack Cocaine. Instead what this defendant does, is what he did in this case. He robbed a lady in front of the store of her purse by assaulting her.

Defense counsel did not object to this commentary at trial, leaving this issue unpreserved for appellate review.

A defendant pressing an unpreserved claim of error must show a plain error that affected substantial rights. The reviewing court should reverse only when the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Comporting with this standard is this Court’s pronouncement in *People v Unger*, 278 Mich App 210; 749 NW2d 272 (2008) that, “[r]eview of alleged prosecutorial misconduct is precluded unless the defendant timely and specifically objects, except when an objection could not have cured the error, or failure to review the issue would result in a miscarriage of justice.” *Id.* at 234-235 (internal quotation marks and citation omitted).

That defendant admitted to taking the victim’s purse to support a crack cocaine habit was put into evidence through the testimony of a police officer. Defendant does not complain of the mention of the cocaine habit, but rather asserts that the prosecuting attorney, through the comments quoted above, suggested that defendant habitually committed crimes involving physical force, and that this caused the jury to conclude that the force element of unarmed robbery was satisfied on the basis of minimal evidence to that effect.

As an initial matter, because we concluded above that the evidence supported the conclusion that defendant used force in the course of taking the victim’s purse, we conclude here that no improper argument or commentary was necessary so to persuade the jury.

Further, to the extent that the prosecuting attorney did exceed the scope of proper argument by suggesting that defendant habitually used force against victims, any such prejudice could have been cured by a timely objection and curative instruction. See *Unger*, 278 Mich App at 234-235.

Moreover, the trial court instructed the jurors that they were to decide this case solely on the basis of the evidence, and that the statements of counsel were not evidence. “It is well established that jurors are presumed to follow their instructions.” *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald