

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KYLE JAMES COLSON,

Defendant-Appellant.

UNPUBLISHED

May 10, 2012

No. 303545

Oakland Circuit Court

LC No. 2010-234730-FH

Before: K. F. KELLY, P.J., and WILDER and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for unarmed robbery, MCL 750.530. The trial court sentenced defendant as a habitual offender, fourth offense, MCL 769.12, to 5 to 25 years' imprisonment. We affirm.

I. BASIC FACTS

Defendant's conviction arises out of the theft of four bottles of alcohol from a grocery store and the ensuing physical confrontation between defendant and the store's loss prevention officer.

The store's loss prevention officer testified that he confronted defendant as defendant was attempting to leave the store without paying for the merchandise. Defendant tackled the loss prevention officer, wrestled with him on the floor of the store, punched him in the chest, and squeezed his hand in an attempt to avoid being handcuffed. Photographs of the loss prevention officer's injuries were admitted into evidence and shown to the jury. In addition, the police officer who responded to the scene testified that when he arrived, defendant was "kind of struggling," the loss prevention officer's hands were bleeding, and there was blood on both the loss prevention officer and defendant. The police officer further testified that the loss prevention officer's injuries were consistent with the loss prevention officer's account of the events.

II. SUFFICIENCY OF THE EVIDENCE

Defendant challenges the sufficiency of the evidence supporting his conviction. Claims of insufficient evidence are reviewed de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). A court reviewing the sufficiency of the evidence must view the evidence in the light most favorable to the prosecution and determine whether the evidence was sufficient to

allow any rational trier of fact to find guilt beyond a reasonable doubt. *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002). All reasonable inferences and all credibility conflicts are resolved in favor of the jury verdict. *People v Solmonson*, 261 Mich App 657, 661; 683 NW2d 761 (2004).

Here, defendant admits that he committed a larceny, but contends that insufficient evidence was presented that he used force or violence to support an unarmed robbery conviction. We disagree. MCL 750.530(1) states that a person commits robbery when that person, “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 [] assaults or puts the person in fear.” MCL 750.530(2) states: “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.”

Viewed in the light most favorable to the prosecution, the evidence was sufficient to support a rational jury’s finding that defendant used force against the store loss prevention officer in attempting to flee after the commission of the retail fraud. Because “in the course of committing a larceny” is defined by MCL 750.530(2) to include flight and attempted flight, this evidence was sufficient to support defendant’s unarmed robbery conviction. *People v Passage*, 277 Mich App 175, 177-178; 743 NW2d 746 (2007).

Defendant points to allegedly conflicting and contradictory testimony, as well as the lack of any video of the confrontation, despite the fact that the store had 48 security cameras. However, all of the evidence was presented to the jury, including defendant’s theory that the loss prevention officer moved the only camera covering the front of the store away from the front of the store because he intended to tackle defendant and did not want to be seen doing so. As noted by our Supreme Court, the weight and credibility of a witness’ testimony, in light of all of the other evidence presented, is a question for the jury that this Court will not disturb on appeal:

[T]he jury is the sole judge of the facts. It is the function of the jury alone to listen to testimony, weigh the evidence and decide the questions of fact. . . . Juries, not appellate courts, see and hear witnesses and are in a much better position to decide the weight and credibility to be given to their testimony. [*People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992) quoting *People v Palmer*, 392 Mich 370, 375-376; 220 NW2d 393 (1974).]

Moreover, accepting defendant’s position that the loss prevention officer’s testimony was not credible would improperly require this Court to view the evidence in the light most favorable to defendant rather than the prosecution. *Hunter*, 466 Mich at 6.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kurtis T. Wilder
/s/ Mark T. Boonstra