STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v GLENN TERRANCE WILLIAMS, a/k/a GLEN TERRANCE WILLIAMS, Defendant-Appellant.	FOR PUBLICATION April 8, 2010 9:00 a.m. No. 284585 Muskegon Circuit Court LC No. 06-053640-FC Advanced Sheets Version

Before: OWENS, P.J., and TALBOT and GLEICHER, JJ.

TALBOT, J.

We granted defendant's delayed application for leave to appeal[1] the trial court's denial of his request to withdraw his guilty plea to a charge of armed robbery. MCL 750.529. The trial court sentenced defendant, as a fourth-offense habitual offender, MCL 769.12, to 24 to 40 years' imprisonment. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

Defendant was initially charged with two separate armed robberies, which occurred on consecutive days at different locations involving a Clark gas station and an Admiral tobacco shop. As part of a "package" deal, defendant pleaded nolo contendere with regard to the Clark gas station charge and guilty with regard to the Admiral tobacco shop charge. Difficulties were encountered when the trial court tried to establish a factual basis for defendant's pleas. In this appeal, we are interested solely in defendant's plea in the Admiral tobacco shop case.

With regard to the Admiral tobacco shop, defendant acknowledged that his intent, upon entering the store, was to steal money. Defendant also admitted that he had placed his hand "up under" his coat, suggesting the possession of a weapon, and told the clerk, "[Y]ou know what this is, just give me what I want." The trial court accepted the plea finding it "to be knowing,

[1] *People v Williams*, unpublished order of the Michigan Court of Appeals, entered June 16, 2008 (Docket No. 284585). Our Supreme Court denied defendant's subsequent application for leave to appeal. *People v Williams*, 482 Mich 1035 (2008).

voluntary, understanding, and accurate." Subsequently, defendant was sentenced to 24 to 40 years' imprisonment for that armed robbery.

Approximately one year after the pleas were accepted and six months after being sentenced, defendant filed a motion seeking to withdraw his pleas. Defendant argued that his plea in the Admiral tobacco shop case was deficient because there was no demonstration or showing that defendant actually took any property from the store. Following the submission of additional briefs, the trial court issued a written opinion and order denying defendant's motion to withdraw his pleas. This appeal ensued.

II. STANDARD OF REVIEW

The issue before this Court can be summarized as whether a completed larceny is necessary to sustain a conviction for armed robbery, pursuant to MCL 750.529. Consequently, the outcome of this appeal is completely dependent on the statutory language comprising MCL 750.529 and MCL 750.530. It is well recognized:

> "[T]he interpretation and application of statutes is a question of law that is reviewed de novo." *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998). The primary goal of statutory interpretation is to give effect to the intent of the Legislature. *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006). The objective of statutory interpretation is to discern the intent of the Legislature from the plain language of the statute. *People v Sobczak-Obetts*, 463 Mich 687, 694-695; 625 NW2d 764 (2001). "We begin by examining the plain language of the statute; where that language is unambiguous, we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written." *People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999). In doing so, we must be mindful that "[i]t is the role of the judiciary to interpret, not write, the law." *People v Schaefer*, 473 Mich 418, 430-431; 703 NW2d 774 (2005), clarified in part on other grounds *People v Derror*, 475 Mich 316, 320 (2006). [*People v Barrera*, 278 Mich App 730, 735-736; 752 NW2d 485 (2008).]

This Court also reviews de novo as a question of law whether specific conduct falls within the prohibitions of a statute. *People v Adkins*, 272 Mich App 37, 39; 724 NW2d 710 (2006). Relevant to this appeal, we would further note that there exists no absolute right to withdraw a guilty plea, which decision is within the trial court's discretion. *People v Ovalle*, 222 Mich App 463, 465; 564 NW2d 147 (1997).

III. ANALYSIS

The four statutes pertaining to robbery are contained within Chapter LXXVIII of the Michigan Penal Code.[2] In this appeal, we are concerned with the statutes pertaining to robbery

[2] Specifically: MCL 750.529 (armed robbery), MCL 750.529a (carjacking), MCL 750.530 (robbery), and MCL 750.531 (bank robbery).

and unarmed robbery following their legislative revision in 2004 PA 128. Specifically, MCL 750.529, defining armed robbery, currently provides:

> A person who engages in conduct proscribed under section 530 and who in the course of engaging in that conduct, possesses a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon, or who represents orally or otherwise that he or she is in possession of a dangerous weapon, is guilty of a felony punishable by imprisonment for life or for any term of years. If an aggravated assault or serious injury is inflicted by any person while violating this section, the person shall be sentenced to a minimum term of imprisonment of not less than 2 years.

Robbery is defined within MCL 750.530, which states:

> (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.

It must be determined, on the basis of these recent revisions, whether a perpetrator must actually commit a completed larceny to be convicted of an armed robbery.[3] Specifically, with reference to the issue on appeal, we must address whether the trial court erred by accepting defendant's guilty plea to the offense of armed robbery when there was no proof or evidence of a completed larceny. We find that the statutory language now encompasses attempts and that, as a result, a completed larceny is no longer required for a conviction of armed robbery.[4]

It is undisputed that MCL 750.529 and MCL 750.530 must be read together because armed robbery requires that a person be "engage[d] in conduct proscribed under [MCL 750.530]." MCL 750.529. In addition, for a robbery to rise to the level of an armed robbery, MCL 750.529 requires that the individual "possess[] a dangerous weapon or an article used or fashioned in a manner to lead any person . . . to reasonably believe the article is a dangerous weapon, or who represents orally or otherwise that he or she is in possession of a dangerous weapon . . . ." Notably, defendant acknowledged during his plea hearing that he acted in a

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[3] Larceny is defined as: "The unlawful taking and carrying away of someone else's personal property with the intent to deprive the possessor of it permanently." Black's Law Dictionary (8th ed).

[4] In contrast, the dissent finds that the absence of a completed larceny precludes a conviction under the statute.

manner to suggest to the store clerk that he possessed a weapon. Hence, the issue before us is restricted solely to whether a larceny must be completed for defendant's armed robbery conviction to stand.

Clearly, other than separately requiring the existence or representation of the presence of a weapon, the crime of armed robbery is restricted to the "conduct proscribed under section 530 . . . ." MCL 750.529. In turn, MCL 750.530 indicates that the conduct "proscribed" is the use of "force or violence" while "in the course of committing a larceny of any money or other property that may be the subject of larceny . . . ." Our analysis must focus on the definition, contained in MCL 750.530(2), of the phrase "in the course of committing a larceny," which "includes acts that occur *in an attempt to commit the larceny, or* during the 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."[5] (Emphasis added.) This Court has no alternative but to strictly adhere to the language used by the Legislature in revising this statute and not seek to attribute either motive or reasoning beyond the plain and ordinary meaning of the wording chosen for use. As such, the crime of armed robbery now also encompasses attempts to commit that offense.

"Where, as here, a statute supplies its own glossary, courts may not import any other interpretation, but must apply the meaning of the terms as expressly defined." *Detroit v Muzzin & Vincenti, Inc*, 74 Mich App 634, 639; 254 NW2d 599 (1977). When dealing with statutory language, it is a well-defined precept that,

> [w]hile courts may decide the validity of statutes and ordinances and construe laws in order to determine the actual legislative intent, the duty of the courts, both with respect to city ordinances and with respect to enactments of the legislature, is merely to interpret and apply the law as it is found to be. They cannot, under the guise of construction, redraft, or change the plain phrasing of the legislative fiat. They may not legislate, nor undertake to compel legislative bodies to do so. [1 Michigan Pleading & Practice, (2d ed) § 2:28, pp 125-127.]

In other words,

> when a statute specifically defines a given term, that definition alone controls. Therefore, a statutory definition supersedes a commonly accepted dictionary or judicial definition of a term. [22 Michigan Civil Jurisprudence (2005 revision), § 202, p 731.]

[5] The dissent elects to interpret this provision to indicate merely the legislative reinstitution of a transactional approach that would allow an armed robbery to be charged if a weapon, or the threat of a weapon, is used at any point in the continuum of the completion of a larceny. Interpreted in this manner, a completed larceny is a necessary component to meet the statutory definition.

The legislative definition of "in the course of committing a larceny" specifically "includes acts that occur in an attempt to commit the larceny . . . ." The term "attempt," which is not defined within the statute, is recognized to mean:

> **1.** The act or an instance of making an effort to accomplish something, esp. without success. **2.** *Criminal law.* An overt act that is done with the intent to commit a crime but that falls short of completing the crime. • Attempt is an inchoate offense distinct from the attempted crime. Under the Model Penal Code, an attempt includes any act that is a substantial step toward commission of a crime, such as enticing, lying in wait for, or following the intended victim or unlawfully entering a building where a crime is expected to be committed. [Black's Law Dictionary (8th ed).]

As such, the statutory language specifically considers and incorporates acts taken in an attempt to commit a larceny, regardless of whether the act is completed. This is consistent with the language of MCL 750.530(2), which distinguishes, by the use of the word "or," acts committed in "an attempt to commit the larceny" from those acts occurring "during the commission of the larceny" or any subsequent acts comprising flight or efforts to retain any property. The term "or" is "used to connect words, phrases, or clauses representing alternatives." *Random House Webster's College Dictionary* (1997). Hence, an attempt to commit a larceny comprises a separate and distinct action and is not merely a component of a completed larceny. In addition, we would note that MCL 750.530(2) defines "in the course of committing *a* larceny" (emphasis added) and not "*the* larceny." The term "a larceny" denotes a more generic, non-specific or generalized act. The fact that the term "the larceny" is subsequently used within this subsection of the statute merely denotes a reference back to the more generalized "a larceny." Logically, acts taken in the process of committing a larceny necessarily include steps or behaviors occurring at any point in the continuum, despite whether they are successfully completed. This language necessarily demonstrates the Legislature's intent to include attempts to commit a larceny, both by implication and by the specific language contained in this statutory provision.

Consistent with the statutory language, which expands the crime of armed robbery to include attempts, is the recently revised criminal jury instruction relating to this crime.[6] The language of the criminal jury instruction pertaining to armed robbery is clearly consistent with the language of MCL 750.529 and MCL 750.530, providing:

> (1) The defendant is charged with the crime of armed robbery. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
>
> (2) First, the defendant [used force or violence against / assaulted / put in fear] *[state complainant's name]*.

[6] We recognize that use of the standard criminal jury instructions is not mandatory and they are not binding authority. *People v Petrella*, 424 Mich 221, 277; 380 NW2d 11 (1985).

(3) Second, the defendant did so while [he / she] was in the course of committing a larceny. A "larceny" is the taking and movement of someone else's property or money with the intent to take it away from that person permanently.

"In the course of committing a larceny" includes acts that occur in an attempt to commit the larceny, or during the 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 or money.

(4) Third, *[state complainant's name]* was present while defendant was in the course of committing the larceny.

(5) Fourth, that while in the course of committing the larceny, the defendant:

[Choose one or more of the following as warranted by the charge and proofs:]

(a) possessed a weapon designed to be dangerous and capable of causing death or serious injury; [or]

(b) possessed any other object capable of causing death or serious injury that the defendant used as a weapon; [or]

(c) Possessed any [other] object used or fashioned in a manner to lead the person who was present to reasonably believe that it was a dangerous weapon; [or]

(d) represented orally or otherwise that [he / she] was in possession of a weapon.

[Add the following paragraph if appropriate:]

(6) Fifth, the defendant inflicted an aggravated assault or serious injury to another while in the course of committing the larceny. [CJI2d 18.1 (footnotes omitted).]

An "attempt" is defined within this section of the criminal jury instructions as having "two elements":

First, the defendant must have intended to commit the crime. Second, the defendant must have taken some action toward committing the alleged crime, but failed to complete the crime. . . . In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as

> an attempt, the act must clearly and directly be related to the crime the defendant is charged with attempting and not some other goal. [CJI2d 18.7.]

Clearly, the criminal jury instructions have specifically been revised to fully coincide with the statutory language of MCL 750.529 and MCL 750.530[7] and to include a definition of the term "attempt" separate from the more general instruction of a crime comprising an attempt. CJI2d 9.1.

We would note that the immediate prior version of the relevant statute, MCL 750.529, before its amendment by 2004 PA 128, read:

> Any person who shall assault another, and shall feloniously rob, steal and take from his person, or in his presence, any money or other property, which may be the subject of larceny, such robber being armed with a dangerous weapon, or any article used or fashioned in a manner to lead the person so assaulted to reasonably believe it to be a dangerous weapon, shall be guilty of a felony . . . .

In revising this language, the Legislature not only recognized the actual possession of a weapon or representation by a criminal that he or she is armed, irrespective of the actual presence of a weapon, but also removed the language mandating the actual behavior of to "rob, steal and take . . . ." Had the Legislature not intended a broader revision of the statute, this language could have remained untouched. In addition, the revised language helps to delineate this offense from assault with the intent to rob and steal while armed, MCL 750.89, which statute provides:

> Assault with intent to rob and steal being armed—Any person, being armed with a dangerous weapon, or any article used or fashioned in a manner to lead a person so assaulted reasonably to believe it to be a dangerous weapon, who shall assault another with intent to rob and steal shall be guilty of a felony, punishable by imprisonment in the state prison for life, or for any term of years.

Hence, MCL 750.89, while similar to MCL 750.529, requires the additional element of an actual "assault."[8]

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[7] "This revised instruction is intended to set forth the elements of the armed robbery offense created by 2004 PA 128, effective July 1, 2004, MCL 750.529." Commentary following CJI2d 18.1.

[8] MCL 750.529 does include a provision for imposition of a minimum two-year sentence "[i]f an aggravated assault or serious injury is inflicted by any person while violating this section . . . ." This merely provides a prosecutor with a certain degree of latitude in electing to charge a particular offender, based on the circumstances of the case. Notably, both statutory provisions, MCL 750.89 and MCL 750.529, indicate that punishment for either offense is imprisonment for life, or for any term of years. A panel of this Court has indicated, in an unpublished opinion, that assault with intent to rob while armed comprises a necessarily included lesser offense of armed robbery but went further to suggest that "[t]he offenses are distinguished only by whether a larceny occurred." *People v Hunt*, unpublished opinion per curiam of the Court of Appeals, issued May 12, 2009 (Docket No. 284648), p 2.

Clearly, 2004 PA 128 was enacted, at least in part, to legislatively reinstitute a transactional approach to this crime, in response to our Supreme Court's decision in *People v Randolph*, 466 Mich 532; 648 NW2d 164 (2002). While the Legislature was motivated to enact a provision that would establish a transactional approach to robbery in order to not limit or restrict to a temporal point during the commission of the crime when the threat of violence or use of a weapon had to occur, the statutory language has exceeded this restricted purpose and it is beyond the role of this Court to speculate regarding what the Legislature intended to do. Rather, we can only enforce the language of the statute as it is actually written.

We would assert that the two remaining criminal statutes in this chapter of the Penal Code also reflect this broader perspective. Notably, the carjacking statute, MCL 750.529a, is almost identical to the wording of MCL 750.530. Specifically, 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.
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> (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.

As already noted, 2004 PA 128 also revised this statute. Similar to MCL 750.529, the earlier version of the carjacking statute provided, in relevant part:

> (1) A person who by force or violence, or by threat of force or violence, or by putting in fear robs, steals, or takes a motor vehicle as defined in section 412 from another person, in the presence of that person or the presence of a passenger or in the presence of any other person in lawful possession of the motor vehicle, is guilty of carjacking, a felony punishable by imprisonment for life or for any term of years.

Once again, the Legislature removed the language "robs, steals, or takes," insinuating that the revised statute was intended to include attempts to commit the designated crime. In contrast, MCL 750.531, which has not been subject to any recent revisions, clearly indicates that it encompasses the "intent" to commit the crime of bank robbery. Specifically, MCL 750.531 states:

> Bank, safe and vault robbery—Any person who, with intent to commit the crime of larceny, or any felony, shall confine, maim, injure or wound, or attempt, or threaten to confine, kill, maim, injure or wound, or shall put in fear any person for the purpose of stealing from any building, bank, safe or other depository of money, bond or other valuables, or shall by intimidation, fear or threats compel, or attempt to compel any person to disclose or surrender the means of opening

> any building, bank, safe, vault or other depository of money, bonds, or other valuables, or shall attempt to break, burn, blow up or otherwise injure or destroy any safe, vault or other depository of money, bonds or other valuables in any building or place, shall, whether he succeeds or fails in the perpetration of such larceny or felony, be guilty of a felony, punishable by imprisonment in the state prison for life or any term of years.

This is important to demonstrate that the concept or legislative act of including language that encompasses an attempt within the statutory definition of a crime is neither unusual nor inconsistent with the most current revisions pursuant to 2004 PA 128. In fact, the revisions to MCL 750.529 through MCL 750.530 now render all of the statutes within this chapter of the Penal Code internally consistent.[9]

A recognized "rule of statutory interpretation provides that well-settled common-law principles are not to be abolished by implication, and when an ambiguous statute contravenes the common law, it must be interpreted so that it makes the least change in the common law." *Heinz v Chicago Rd Investment* Co, 216 Mich App 289, 295; 549 NW2d 47 (1996). However, simultaneously, "this Court is instructed to avoid any construction that would render a statute, or any part of it, surplusage or nugatory." *Id.* at 295-296. First and foremost, concerns regarding the revised statute's alleged abrogation of the common law by no longer requiring a completed larceny are unnecessary. This particular concern pertaining to statutory interpretation pertains to ambiguous statutes and we believe the language of MCL 750.529 and MCL 750.530 to be clear in encompassing attempts within the purview of "in the course of committing a larceny" by definition. Second, the very fact that the Legislature has elected to use a transactional approach is according to our Supreme Court, in and of itself "contrary to the common law." *Randolph*, 466 Mich at 545. If the Legislature intended this statute to adopt a transactional approach, it is reasonable to assume it was aware of its abrogation of the common law and intended to take it a step further. See 22 Michigan Civil Jurisprudence, Statutes (2009), § 220. In addition, the statute, even before its revision, superseded the common law. Specifically:

> When a statute takes up and completely covers a subject previously governed by the common law, the common law ceases to operate upon it, except where the statute has made no provisions for its punishment. The statute declaring how penalties will be enforced covers the entire ground and leaves nothing to be supplied by the common law. By statute the common law prevails where there is no specific statute determining what constitutes an offense. . . .

[9] We would note that other jurisdictions have adopted the approach of including an attempt to commit the offense within the statute defining the crime. "'Under some of the new penal codes robbery does not require an actual taking of property. If force or intimidation is used in the attempt to commit theft this is sufficient.'" Black's Law Dictionary (8th ed), quoting Perkins & Boyce, Criminal Law (3d ed, 1982), p 343, after defining "robbery." See, also, *Irons v State*, 886 So 2d 726 (Miss App, 2004).

> The state is not tied down by any provision of the Federal Constitution to the practice and procedure which existed at common law; and thus, subject to the provisions of its own constitution, it may avail itself of the wisdom gathered from experience to make such changes as may be deemed necessary. [1 Gillespie, Michigan Criminal Law & Procedure (2d), § 1:5, pp 19-20.]

Finally, as a general observation, in defining a robbery, the "essential elements of unarmed robbery are assault with force and violence while the defendant is not armed, accompanied by the intent to rob and steal." 4 Gillespie, Michigan Criminal Law & Procedure (2d), § 133:2, p 400. Hence, it is the violence or threat of force and the intent that constitute the primary elements rather than the successful completion of a particular act that comprise this offense.

Further, the legislative history pertaining to the statutory revisions supports a holding that the inclusion of attempts within the offense was deliberate. Specifically, in discussing the content of the proposed revisions, it was noted:

> The bill would amend the Michigan Penal Code to specify that certain offenses involving larceny *would include acts that occurred in an attempt to commit the larceny*, during the commission of the larceny, in flight or attempted flight after the larceny was committed, or in an attempt to retain possession of the stolen property. This would apply to armed robbery, unarmed robbery, and carjacking. [Senate Fiscal Agency Analysis, HB 5105, May 17, 2004 (emphasis added).]

Unfortunately, following revision of the statutory language, the application and interpretation of these provisions has not been consistent within caselaw. In *People v Chambers*, 277 Mich App 1, 8 n 7; 742 NW2d 610 (2007), this Court acknowledged the revision of MCL 750.529 and MCL 750.530 and noted the alteration of previously recognized elements defining these crimes. Subsequently, in an unpublished opinion, this Court, citing *Chambers* opined, in pertinent part:

> Under the plain language of the armed robbery statute, the phrase "in the course of committing a larceny" includes acts that occur in an attempt to commit a larceny, during its commission, and ones that occur in flight after the larceny. MCL 750.530. Thus, the armed robbery statute does not require that a felonious taking or completed larceny occur; it requires that the use of force or the placement of a person in fear, occur "in the course of committing a larceny" and with the use of a dangerous weapon, or an object reasonably believed to be a dangerous weapon. [*People v Nelson*, unpublished opinion per curiam of the Court of Appeals, issued January 8, 2009 (Docket No. 281662), p 2.]

Other opinions appear to retain the previous requirements of a completed larceny but lack a certain level of clarity in their analysis. By way of example, in *People v Thomas*, unpublished opinion per curiam of the Court of Appeals, issued October 6, 2009 (Docket No. 287382), the Court distinguished between the revised armed robbery statute and the bank robbery statute. However, in undertaking this analysis the Court did not recognize any significant departure in the elements for armed robbery from caselaw that existed before the revision of MCL 750.529, resulting in the determination by the Court that "[a]rmed robbery continues to require a theft

from a person . . . ." *Id.*, unpub op p 2. Notably, in and of itself this is an inaccuracy because the current statute encompasses the use or threat of force (with the presence or representation of a weapon) against a person while "in the course of committing a larceny of any money or other property that may be the subject of larceny . . . ." MCL 750.529; MCL 750.530(1). It does not require a direct "taking" or "theft from a person." Similarly, a statement by this Court in *People v Monk*, unpublished opinion per curiam of the Court of Appeals, issued January 22, 2009 (Docket No. 280291), contains an obvious contradiction. On the one hand, the Court states, "Acts included in the phrase 'in the course of committing a larceny' include all acts that occur during a larceny's attempt or commission . . . . An attempted or committed larceny by an armed individual, or by a person the victim reasonably believes is armed, is required under the statute." *Id.*, unpub op p 2. However, this statement is immediately followed by a reference indicating the necessity of a taking despite recognition that the statute encompasses attempts to commit the crime. Specifically, the Court opined, "The statute does not expressly require that any property actually taken must be owned by the victim. Rather, property must just be taken from the victim or his presence in the course of a larceny."[10] *Id.*

Courts must proceed with greater caution in their use and reliance on prior published opinions delineating the elements of armed robbery, which preceded the revision of MCL 750.529. "[A] change by amendment in the phraseology of a statute is presumed to indicate a legislative purpose to change the meaning." 3A Michigan Pleading & Practice (2d ed, 2007 revised vol), § 36:146, p 251; see, also, *People v Auto Serv Councils of Mich, Inc*, 123 Mich App 774, 787; 333 NW2d 352 (1983) ("It is reasonable to presume some intentionality in the insertion of this additional language."). Clearly, the Legislature has enacted changes affecting the elements comprising this offense and it is our responsibility to correctly apply the revised language of MCL 750.529 to the particular evidence and facts of each individual case.

IV. CONCLUSION

[10] This same inconsistency is also present within caselaw involving MCL 750.529a, the carjacking statute. In discussing concerns pertaining to double jeopardy considerations involving the carjacking statute and the assault with intent to rob while armed statute, this Court noted: "[T]he assault with the intent to rob while armed statute does not require the larceny of a motor vehicle, as does the carjacking statute," implying the necessity of a completed larceny. *People v McGee*, 280 Mich App 680, 685; 761 NW2d 743 (2008). See, also, *People v Carter*, unpublished opinion per curiam of the Court of Appeals, issued March 27, 2007 (Docket No. 268408), p 2, indicating the carjacking statute requires a "taking and asportation"; *People v Richardson*, unpublished opinion per curiam of the Court of Appeals, issued October 25, 2007 (Docket No. 270606), p 3, implying the necessity of a completed taking but not retention of a vehicle to be convicted of carjacking. In contrast, in *People v Morgan*, unpublished opinion per curiam of the Court of Appeals, issued May 19, 2009 (Docket No. 284986), p 2, this Court recognized the necessity of only an attempt to commit a larceny as meeting the statutory requirements for carjacking. In *People v Dearmin*, unpublished opinion per curiam of the Court of Appeals, issued May 11, 2006 (Docket No. 259432), p 3, a panel of this Court clearly recognized the inclusion of an attempt within MCL 750.529a, stating, in relevant part: "While the new statute makes clear that actions taken in an attempt to commit a larceny are included in the ambit of the statute, it also makes clear that the required criminal act or attempt is a larceny."

"[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court 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). In the factual circumstances of this case, defendant acknowledged that he represented to the store clerk that he was in possession of a weapon at the Admiral tobacco shop. From the colloquy at sentencing, it was also established that defendant had the intent to take or obtain money from the store's cash register. It was not established that defendant had any intention to harm the store's clerk. While defendant was not successful in that he left the store without money from the cash register, sufficient elements of the crime were established to sustain his conviction for armed robbery based on the language of the statute.

Affirmed.

/s/ Michael J. Talbot
/s/ Donald S. Owens