

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH MICHAEL SCOTT,

Defendant-Appellant.

UNPUBLISHED

December 27, 1996

No. 160292

LC No. 92-58751-FC

Before: Markey, P.J., and Michael J. Kelly and M.J. Talbot.* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797. He was sentenced to serve eight to fifteen years in prison. He appeals as of right and we affirm.

On November 16, 1991, defendant and two other men attempted to steal Richard Greenwood's van. Greenwood interrupted the attempt, and was subsequently assaulted by defendant with a pair of vise grips, resulting in severe injuries to Greenwood's head and face. During the assault, Greenwood was separated from his keys, his wallet, and a moneybag that was tucked inside his coat out of view. The keys were found on the ground near the van immediately after the incident. However, Greenwood's wallet and the moneybag were never located. During an interview with Grand Rapids Police Detective Robert Durst, defendant admitted picking the moneybag up off the ground and taking it. Defendant maintained that the assault of Greenwood was solely to facilitate his escape, and was not to gain possession of Greenwood's property.

Defendant first claims that the trial court should have entered a directed verdict for defendant at the close of the people's proofs. Specifically, in his motion for directed verdict, defendant argued that the prosecution's evidence did not support a conviction for armed robbery because there was no evidence that the force used by defendant was intended to accomplish a taking, and a connection must exist between the force and the taking for armed robbery to occur.

* Circuit judge, sitting on the Court of Appeals by assignment.

When this Court reviews a trial court's ruling on a motion for directed verdict, it must examine, in the light most favorable to the prosecution, the evidence produced by the prosecutor to assess whether a rational trier of fact could find that the essential elements of the crime charged were proven beyond a reasonable doubt. *People v Daniels*, 192 Mich App 658, 665; 482 NW2d 176 (1992). The elements of armed robbery are (1) an assault and (2) a felonious taking of property from the victim's person or presence while (3) the defendant is armed with a weapon described in the statute. *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995). Circumstantial evidence and reasonable inferences which arise from the evidence may be sufficient to prove the elements of a crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). In *People v LeFlore*, 96 Mich App 557, 562; 293 NW2d 628 (1980), this Court held that the armed and unarmed robbery statutes clearly require that the force must be used to accomplish the taking, and if no purposeful relationship exists between these two elements, the incident is merely two isolated crimes of larceny and possibly assault and battery.

Here, although there is no direct evidence that defendant assaulted Greenwood for the purpose of stealing the van or any other item, a rational trier of fact could have found beyond a reasonable doubt from circumstantial evidence that such an intent existed. First, because of the serious nature of Greenwood's injuries, a reasonable jury could infer that defendant assaulted Greenwood in order to obtain some item in Greenwood's possession, rather than to facilitate defendant's escape which was blocked by Greenwood. Next, the evidence showed that during the assault of Greenwood one of his accomplices was yelling to get Greenwood's keys. Based on this evidence, a reasonable jury could conclude that all the elements of armed robbery were satisfied because defendant assaulted Greenwood with a dangerous weapon, the vise grips, and feloniously took Greenwood's property, the keys, off Greenwood's person. Therefore, the trial court properly denied defendant's motion for directed verdict.

Defendant claims that remarks made by the prosecutor during closing argument improperly referred to defendant's right to remain silent and not testify. We disagree. A defendant's failure to object to the prosecutor's remarks precludes this Court from reviewing the matter unless a miscarriage of justice will result or a cautionary instruction could not cure the prejudicial effect. *People v Lee*, 212 Mich App 228, 245; 537 NW2d 233 (1995). Issues of prosecutorial misconduct are decided by this Court on a case by case basis, and this Court must review the pertinent portion of the record and the prosecutor's remarks in context to ascertain whether the defendant was denied a fair and impartial trial. *People v LeGrone*, 205 Mich App 77, 82-83; 517 NW2d 270 (1994). Further, it is permissible to consider prosecutorial remarks in light of defense arguments. *People v Lawton*, 196 Mich App 341, 353; 492 NW2d 810 (1992).

Here, the prosecutor's remark that defendant's statement to Durst was non-testimonial was to rebut defendant's argument that the statement was reliable. Next, the prosecutor's remark that defendant had not "stood up" was merely a reference to defendant's size. Even if the jurors construed the remarks as referring to defendant's silence, they were instructed that defendant had the right to remain silent and that his silence was not to affect their verdict in any way. Accordingly, we find no error.

Affirmed.

/s/ Jane E. Markey

/s/ Michael J. Kelly

/s/ Michael J. Talbot