

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES GRAHAM COOPER, JR.,

Defendant-Appellant.

UNPUBLISHED

July 31, 2001

No. 222670

Wayne Circuit Court

Criminal Division

LC No. 99-003391

Before: Doctoroff, P.J., and Murphy and Zahra, JJ.

PER CURIAM.

Defendant was charged with two counts of unarmed robbery, MCL 750.530, and one count of fleeing a police officer, MCL 257.602a. Defendant was convicted following a bench trial of one count of larceny from a person, MCL 750.357. He was sentenced to 2 ½ to 10 years' imprisonment. He appeals as of right. We affirm.

Defendant first argues that the evidence was insufficient to establish the essential elements of larceny from a person beyond a reasonable doubt. We disagree. When reviewing the sufficiency of the evidence in an appeal from a bench trial, we determine whether, viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find the essential elements of the crime proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Viewing the evidence in this light, we conclude that a rational trier of fact could have found beyond a reasonable doubt (1) that defendant took; (2) and carried away the property of another; (3) from a person; (4) with the intent to permanently deprive the complainant of the property; and (5) and without the complainant's consent and against the complainant's will. *People v Wallace*, 173 Mich App 420, 426; 434 NW2d 422 (1988).

Farmer Jack employee James Smith testified at trial that he noticed the outline of a box bulging through defendant's jean jacket, and, further testified that when he opened up defendant's jacket, he saw a package of Tylenol concealed inside. Additional trial testimony established that Smith struggled with defendant in an effort to detain him, but that despite these efforts, defendant fled the store, dropping packages of Tylenol to the floor. Moreover, both Smith and another employee, Thomas Korzeniowski, identified the Tylenol found on the floor as

property offered for sale by Farmer Jack. Thus, the evidence established a taking and carrying away of store property.

Likewise, we conclude that the evidence presented was sufficient to establish that a taking occurred from a person because there was evidence that defendant sought to leave with the Tylenol in his coat while in the immediate presence of store employee Smith. In addition, a rational trier of fact could reasonably infer from the evidence presented that defendant took the property with an intent to permanently deprive Smith and the store of that property. The testimony presented showed that defendant failed to respond when Smith asked defendant to stop and inquired as to what was inside his jacket. Trial testimony further showed that defendant struggled with Smith, instead of turning over the Tylenol to him. These circumstances further support a finding that defendant did not have consent to take the Tylenol. Accordingly, we conclude that, when viewed in a light most favorable to the prosecution, the evidence could lead a rational trier of fact to find, beyond a reasonable doubt, that plaintiff established each element of the offense. *Johnson, supra*.

Defendant next argues that the trial court abused its discretion by imposing a disproportionate sentence. We disagree.

The record of the sentencing hearing reveals that defendant was sentenced as an habitual offender. The presentence investigation report indicates that defendant had been convicted of five prior felonies and three misdemeanors. When a habitual offender's underlying felony and criminal history demonstrate that he is unable to conform his conduct to the law, a sentence within the statutory limits is proportionate. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997). Defendant's 2½-year minimum prison sentence falls within the guideline range. We conclude that defendant's sentence is proportionate given that his criminal history and continued drug use demonstrate an inability to conform his conduct to the law. Thus, we find no error.

Affirmed.

/s/ Martin M. Doctoroff
/s/ William B. Murphy
/s/ Brian K. Zahra