

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY DARNELL HARDNETT,

Defendant-Appellant.

UNPUBLISHED

November 16, 2004

No. 249418

Wayne Circuit Court

LC No. 03-000246-01

Before: Zahra, P.J., and White and Talbot, JJ.

PER CURIAM.

Defendant was charged with armed robbery, MCL 750.529, and felonious assault, MCL 750.82. Following a bench trial, he was convicted of unarmed robbery, MCL 750.530, and felonious assault, MCL 750.82. He was sentenced to five to fifteen years in prison for the unarmed robbery conviction and to two to four years in prison for the felonious assault conviction. He appeals as of right. We affirm defendant's convictions, but remand for correction of his presentence report.

Defendant first argues that the prosecution failed to present sufficient evidence to support defendant's conviction of unarmed robbery because the evidence clearly established that defendant's use of force or violence ceased before he stole items from the store as he was departing. We disagree.

In reviewing the sufficiency of evidence to support a conviction, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the prosecution proved the essential elements of the crime beyond a reasonable doubt. *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002). "The elements of unarmed robbery are: (1) a felonious taking of property from another, (2) by force or violence or assault or putting in fear, and (3) being unarmed." *People v Johnson*, 206 Mich App 122, 125-126; 520 NW2d 672 (1994).

Defendant argues that the trial court improperly applied the "transactional approach" to robbery. Defendant contends that he cannot be convicted of unarmed robbery because the prosecutor failed to show that the theft was contemporaneous with the earlier application of violence, assault, or placing in fear. We disagree.

The Supreme Court abandoned the “transactional approach” in *People v Randolph*, 466 Mich 532, 539; 648 NW2d 164 (2000), and held that a theft completed without using force or violence cannot be converted into an unarmed robbery by the *subsequent* use of violence to escape or retain possession of the stolen property. *Id.* However, the *Randolph* Court made clear that unarmed robbery requires that “the force, violence or putting in fear underlying the robbery must occur *before or contemporaneously with* the felonious taking.” *Id.* at 551, emphasis added.

We conclude that the evidence was sufficient to support a finding that the use of force was before or contemporaneous with the felonious taking. The record reflects that defendant entered a bookstore, went up to the cash register, put his hand in his waistband, said he had a gun, and demanded money.¹ When the owner was slow to comply, defendant threatened to blow the owner’s head off. Further, when a clerk attempted to call 911, defendant picked up a pair of scissors, raised them over the clerk’s head, and threatened to kill her if the owner did not give him money. At that moment, the furnace made a screeching noise. The owner told defendant that he was on camera and should run because the authorities would come soon. Defendant dropped the scissors, quickly grabbed some merchandise that he had placed on the counter, and ran out the door. The store owner pursued defendant and caught him.

Defendant’s use of violence immediately before the theft, with no break in time between the violence and the theft, adequately supports the robbery conviction. The prosecution presented sufficient evidence for the trial court to convict defendant of unarmed robbery.

Defendant next argues that a remand to the trial court is necessary to correct two errors in the presentence investigation report (PSIR). First, the PSIR states that defendant was convicted of armed robbery; it should read unarmed robbery. Second, the PSIR erroneously states that defendant has a previous armed robbery conviction, which should also be corrected to read unarmed robbery. The prosecutor called the error to the court’s attention at sentencing and stated that it should be corrected. The court stated “Okay.” While the court’s answer was a general reply, defendant could have reasonably understood that it was unnecessary to address the matter further. The matter is remanded for the sole purpose of the court making the corrections to the PSIR.

Affirmed, but remanded for correction of the PSIR. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Helene N. White
/s/ Michael J. Talbot

¹ Defendant also handed the owner a note which read, “This is a stick-up; give me all your damn money now. I have a gun; I don’t want to shoot.” No one read this note until after defendant had been arrested.