STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 9, 2010
v	No. 293819 Wayne Circuit Court
MAURICE ANTHONY GRANBERRY, Defendant-Appellant.	LC No. 09-011120-FH

Before: SERVITTO, P.J. and ZAHRA and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of unarmed robbery, MCL 750.530. Because the prosecution presented sufficient evidence for a rational trier of fact to find defendant guilty beyond a reasonable doubt of unarmed robbery, we affirm.

This case arises from an incident that occurred at a Valero gas station on April 22, 2009, in Detroit, Michigan. Rakhimjon Usmanov testified that on that day he was working as a cashier at the gas station with his cousin, Waisuddin Adilyar. Usmanov stated that around 8:00 or 9:00 a.m., defendant came into the gas station and took three or four bottles of motor oil and walked out of the store. Usmanov recognized defendant because he was a regular customer of the gas station but stated that defendant seemed to be drunk. Usmanov followed defendant out of the store and politely asked him to return the motor oil but he would not listen. Usmanov then ran after defendant, got in front of him, and tried to take back the motor oil. A few customers from the store looked on and tried to help. Defendant held the motor oil with one hand and hit Usmanov in the chest "a couple times" as the two men struggled over the motor oil. Usmanov ultimately got the motor oil back, but defendant then took Usmanov's cell phone from his belt and tried to walk away. At that point, Adilyar came outside, and tried to help Usmanov. Usmanov asked defendant to give back the cell phone, but defendant refused. Some customers tried to help Usmanov, one of whom successfully retrieved the cell phone from defendant. Having retrieved the phone and the motor oil, Usmanov and his cousin went back in the store. Usmanov testified that defendant stood outside around the gas pumps looking angry. Police arrested defendant just outside the gas station door.

Defendant argues that the trial court erred in its denial of defendant's motion for judgment notwithstanding the verdict. In criminal proceedings, JNOV motions are actually motions for directed verdict of acquittal. *See People v Duenaz*, 148 Mich App 60, 64; 384 NW2d 79 (1985). This Court reviews de novo a trial court's decision on a motion for directed

verdict of acquittal. *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). "In reviewing the denial of a motion for a directed verdict, this Court views the evidence in a light most favorable to the prosecution to determine whether the evidence was sufficient to permit a rational factfinder to find the essential elements of the crime proven beyond a reasonable doubt." *People v Partridge*, 211 Mich App 239, 240; 535 NW2d 251 (1995). "Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime." *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993), citing *People v Petrella*, 424 Mich 221, 275; 380 NW2d 11 (1985). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007), citing *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Defendant specifically asserts that because Usmanov never feared for his safety, there is insufficient evidence to prove defendant guilty of unarmed robbery and consequently the trial court improperly denied defendant's motion for JNOV. Defendant submits that there was sufficient evidence presented to find that he committed a larceny in a building, but not unarmed robbery. "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).

In this case, defendant took motor oil from the Valero gas station and a cell phone from Usmanov's belt. Defendant used force and violence. This Court has held:

> [MCL 750.530] makes no distinction between using force to evade capture as part of a physical struggle against pursuers in an effort to break free from their grasp or attempts at restraint and force used affirmatively and not within that context. Rather, the use of any force against a person during the course of committing a larceny, which includes the period of flight, is sufficient under the statute. [*Passage*, 277 Mich App at 178.]

Usmanov testified that defendant hit him in the chest more than once, and testified that "to stop [Usmanov] from taking the stuff [back from defendant], [defendant] was using force against [Usmanov]." Usmanov had "nail scratches" on his upper chest and neck after his confrontation with defendant. Officer Deitrich Spidell, who arrived on the scene just after the incident, testified that "[Usmanov's] face was all red around the cheeks and around his neck, and he had blood around his mouth, like dried blood around his mouth . . . . Just mainly he looked like he had been in a scuffle." Considering the record evidence, viewed in a light most favorable to the prosecutor, the evidence shows that defendant used physical force against Usmanov and committed unarmed robbery.

Defendant next argues that the trial court's finding regarding defendant's JNOV motion was incorrect because it took into account a "psychological force" not contemplated in MCL 750.530. The trial court stated:

> [w]here there was physical force in actuality applied or force by just the presence of the individual in refusing to give up the property that the person had in my opinion still constitute[s] force . . . even if Mr. [Usmanov] had not been pushed in the chest . . . it still would've been sufficient force by not giving [the motor oil and cell phone] up, because it wasn't his property and now he had confrontation.

Even if the trial court made an incorrect statement of the law, the evidence of defendant's actual use of force against Usmanov is enough to meet the elements of unarmed robbery. Defendant has not established error.

Defendant also argues that he is entitled to a new trial or entry of the lesser offense of larceny in a building. Defendant did not move for a new trial in the trial court. "MCR 6.431(B) allows the trial court to order a new trial in a criminal case only when a motion has been brought by the defendant." *People v McEwan*, 214 Mich App 690, 694-695; 543 NW2d 367 (1995). Because defendant failed to move for a new trial, this issue is not preserved for appeal. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). In any event, because we concluded that there was sufficient evidence to prove defendant guilty of unarmed robbery, we need not consider whether his actions constituted larceny in a building.

Affirmed.

/s/ Deborah A. Servitto
/s/ Brian K. Zahra
/s/ Pat M. Donofrio