STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 25, 2014
v TIMOTHY PARKER, Defendant-Appellant.	No. 317413 Muskegon Circuit Court LC No. 12-062697-FC

Before: BOONSTRA, P.J., and DONOFRIO and GLEICHER, JJ.

PER CURIAM.

Defendant appeals by right his conviction, following a jury trial, of armed robbery, MCL 750.529. The trial court sentenced him to 16 to 35 years' imprisonment. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

On October 20, 2012, defendant entered a gas station and attempted to purchase a beer using a credit or debit card. When his card was declined, defendant told the store clerk, Kymberlee Butler, that this was "a holdup" and that she needed to open the cash register. He put his right hand in his sweatshirt pocket and pointed it at Butler's midsection. After Butler told defendant that she was not opening the register, he made his way around the counter toward her. Defendant continued to tell Butler that it was a holdup and that she needed to open the register, but Butler continued to refuse. After shoving defendant back twice, Butler reached for her phone and defendant fled. Defendant was recorded on the store's surveillance video system, and was apprehended by police. Following his conviction and sentence, defendant appealed, arguing that the evidence presented at trial was insufficient to sustain a conviction for armed robbery.

II. STANDARD OF REVIEW

We review a defendant's challenge to the sufficiency of the evidence de novo. *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012). However, we do not interfere with the factfinder's role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, amended 441 Mich 1201 (1992). It is for the trier of fact rather than this Court to determine what inferences

can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). The prosecution need not negate every reasonable theory of innocence, but must only prove its own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Circumstantial evidence and the reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). We resolve all conflicts in the evidence in favor of the prosecution. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

III. ANALYSIS

Defendant argues that his armed robbery conviction is not supported by sufficient evidence because there was no evidence that he was "armed" or that Butler was put in fear by the threat of a weapon. We disagree.

The "armed robbery" statute, MCL 750.529, provides:

> A person who engages in conduct proscribed under [MCL 750.530] 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 . . . .

MCL 750.530 is the "robbery" statute. It provides:

> (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 . . . .
>
> (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.

The "armed robbery" statute, MCL 750.529, thus incorporates the "robbery" statute, MCL 750.530, and adds additional elements to satisfy the "armed" component of armed robbery. In *People v Chambers*, 277 Mich App 1, 7-8; 742 NW2d 610 (2007), this Court thus articulated the combined elements of armed robbery by first referencing the "robbery" components (that derive from MCL 750.530), and then referencing the "armed" components (that derive from MCL 750.529):

> (1) the defendant, in the course of committing a larceny of any money or other property that may be the subject of a larceny, used force or violence against any person who was present or assaulted or put the person in fear, and (2) the defendant, in the course of committing the larceny, either possessed a dangerous weapon, possessed an article used or fashioned in a manner to lead any person

> present to reasonably believe that the article was a dangerous weapon, or represented orally or otherwise that he or she was in possession of a dangerous weapon.

Defendant does not dispute that the elements of "robbery" are satisfied in this case, nor could he based on the evidentiary record. Indeed, defendant acknowledges that a "larceny" includes an unsuccessful attempt, *People v Williams*, 491 Mich 164, 182-183; 814 NW2d 270 (2012), and concedes that he made physical contact with Butler, that he "came around the counter" toward Butler, and that she "began to feel cornered" and "concerned." Indeed, Butler testified that she was afraid when, after she refused to open the register, defendant moved behind the counter and approached her. Further, Butler also testified that defendant grabbed her wrist when she pushed him away the second time. Viewing the evidence in the light most favorable to the prosecution, *Reese*, 491 Mich at 139, a rational trier of fact could find that defendant put Butler in fear or assaulted her. See *People v Gardner*, 402 Mich 460, 479; 265 NW2d 1 (1978) (defining criminal assault as "either an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery") (quotation marks and citations omitted).

Defendant's argument instead is that the additional components of armed robbery, as set forth in MCL 750.529, are not satisfied because there was no evidence that he was "armed" or that Butler was put in fear by the threat *of a weapon*. Defendant acknowledges, however, that he need not have been "armed," in the sense of actually possessing a dangerous weapon, in order to satisfy the "armed" component of MCL 750.529. His two stated contentions thus blend into a single argument, i.e., that that he was not "armed" because Butler was not put in fear "of a weapon."

As defendant properly recognizes, MCL 750.529 articulates the requirements of the "armed" component of armed robbery as 3 disjunctive alternatives. Defendant must either: (1) "possess[] a dangerous weapon"; or (2) "possess . . . an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon"; or (3) "represent[] orally or otherwise that he . . . is in possession of a dangerous weapon." *Id*.

Neither party contends that the first alternative was satisfied, nor does the record reflect any evidence that defendant in fact "possess[ed] a dangerous weapon." Defendant posits that the second alternative also was not satisfied because Butler saw defendant put his finger in the pocket of his sweatshirt before declaring a "holdup," and that she did not believe that defendant possessed a dangerous weapon. Defendant thus implicitly argues that, although he may have "used or fashioned" his finger in a manner to lead others to believe that it was a dangerous weapon, such a belief would not have been "reasonable," under MCL 750.529, because Butler subjectively believed otherwise.

MCL 750.529 does not, however, establish a test based on subjective belief; rather, the test under the second alternative of MCL 750.529 is an objective one, i.e., whether defendant acted "in a manner to lead any person present to reasonably believe" he possessed a dangerous weapon. But even assuming that Butler could not "reasonably believe" that defendant possessed a dangerous weapon unless she subjectively believed it, the evidence in that regard is not as definitive as defendant suggests.

A belief that someone possesses a dangerous weapon can be induced by shaping one's hand to look like a gun covered by clothing. See *People v Taylor*, 245 Mich App 293, 301; 628 NW2d 55 (2001). Our Supreme Court has stated that "an object pointing out from under a coat, together with statements threatening a victim with being shot, clearly satisfies the statutory definition of armed robbery." *People v Jolly*, 442 Mich 458, 468; 502 NW2d 177 (1993). In this case, defendant announced that this was a "holdup" and demanded that Butler open the cash register; he coupled this demand with placing his hand in the pocket of his sweatshirt and pointing it out toward Butler. A "holdup" is generally understood to indicate a robbery with a gun. See *Taylor*, 245 Mich App at 302 (stating that "the phrase 'this is a stick up' is universally understood to indicate the presence of a weapon"); *Random House Webster's College Dictionary* (2000) (defining a "holdup" as "a robbery of a person at gunpoint"). Butler, although she initially testified that she thought defendant was joking, also testified that defendant was pointing his hand "like simulating that he had a gun or that he had something in his pocket," and she agreed that she did not know whether defendant had a weapon. In reference to still images from the store surveillance cameras, Butler described one photo as depicting defendant having "his hand pointed at me or something in his pocket pointed towards me." As stated above, she also testified that she was afraid when defendant began to move around the counter.[1] Although some portions of Butler's testimony arguably support a different inference, we conclude, viewing the evidence in the light most favorable to the prosecution, *Reese*, 491 Mich at 139, that a rational trier of fact could find that Butler reasonably believed that defendant possessed a dangerous weapon. *Kanaan*, 278 Mich App at 619.

More significantly, we find that the evidence satisfied the third alternative of MCL 750.529. That is, even if Butler did not subjectively or reasonably believe that defendant had a gun, the evidence was sufficient to enable a rational trier of fact to determine that defendant represented, orally or otherwise, that he was in possession of a dangerous weapon. MCL 750.529. Contrary to defendant's position, Butler's belief is not relevant to whether defendant represented orally or otherwise that he was in possession of a dangerous weapon. Nothing in the language of the third alternative prong of armed robbery statute, MCL 750.529, requires that a defendant's representation be believed. See *People v Mattoon*, 271 Mich App 275, 278; 721 NW2d 269 (2006) (declining to "read into" a penal statute a requirement not expressed by the Legislature). Nor does it require that Butler have been put in fear of a weapon. As stated above, defendant used the word "holdup," which is commonly associated with armed robbery with a firearm. See *Taylor*, 245 Mich App at 302. He additionally acted to feign possession of a gun pointed at Butler from inside the pocket of his sweatshirt. Accordingly, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find beyond a reasonable doubt that, by his words and conduct, defendant had orally or otherwise represented that he was in possession of a dangerous weapon. *Reese*, 491 Mich at 139. The elements of armed robbery were therefore satisfied.

---

[1] On cross-examination, Butler did state that she "assumed" defendant did not have a gun when he initially placed his hand in his pocket, but later stated "I wasn't a hundred percent sure."

Affirmed.

/s/ Mark T. Boonstra
/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher