STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 20, 2012
v	Nos. 302505; 302506 Muskegon Circuit Court
RAYFIELD DEANGELO JOHNSON, Defendant-Appellant.	LC Nos. 10-059268-FH; 10-059321-FH

Before: RONAYNE KRAUSE, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of unarmed robbery, MCL 750.530; unlawful imprisonment, MCL 750.349b; and unlawfully driving away an automobile (UDAA), MCL 750.413. The trial court sentenced defendant to 54 to 180 months' imprisonment for both his unarmed robbery and unlawful imprisonment convictions, and to 242 days for his UDAA conviction. We affirm.

On the date of these offenses, defendant secreted two packages of T-shirts under his zip-up jacket while in a Wal-Mart store. A Wal-Mart employee saw this and followed defendant. The employee identified himself as a person working security and said he was going to call the police. While still in the store, a few feet before the registers, defendant "ditched" the T-shirts and ran out of the store. The security employee followed defendant out of the store and a chase ensued. Defendant ran up to a car where the victim was putting her 12-month-old daughter in a car seat. The victim ordered defendant out of the car, but defendant stayed in the car and locked the doors. Defendant told her to "go, go, go" and, concerned that defendant had a weapon, she drove the car away. Soon thereafter, police arrived and pulled in front of the victim's car, blocking the road.

On appeal, defendant challenges the sufficiency of the evidence supporting his convictions. "[C]hallenge[s] to the sufficiency of the evidence in a bench trial [are reviewed] de novo and in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002).

Defendant first argues that the evidence was insufficient to support his unarmed robbery conviction because there was no completed larceny. We disagree. We have previously held that

a completed larceny is not an element of robbery, rather the phrase "in the course of committing a larceny" also encompasses attempted larceny. MCL 750.530(2); *People v Williams*, 288 Mich App 67, 72-83; 792 NW2d 384 (2010).[1] Unarmed robbery only requires that "in the course of committing a larceny," defendant use force or violence against any person who is present, or assault or put the person in fear. MCL 750.530(1). Here, where defendant attempted to steal T-shirts from Wal-Mart and, in the course of his flight from the crime, entered the victim's car and placed her in fear, the evidence is sufficient to support his unarmed robbery conviction. MCL 750.530.

Next, on appeal, defendant argues the evidence was insufficient to support his unlawful imprisonment conviction because he did not restrain the victim in her car. We disagree. For purposes of unlawful imprisonment, "restrain" means "to forcibly restrict a person's movements or to forcibly confine the person so as to interfere with that person's liberty without that person's consent or without lawful authority." MCL 750.349b(3)(a). Here, while defendant used no physical force or overt verbal threats, defendant entered the victim's car without invitation and locked the doors; locking the doors includes using force to restrain the victim. He then told the victim to drive, stating "go, go, go." He clearly intended to confine the victim to the car and to force her to drive. While the victim could have unlocked the doors, by locking the doors defendant impeded her ability to exit and forced her to remain in the driver's seat. While unlocking the doors would have taken only a moment, restraint does not require any particular length of time. MCL 750.349b(3)(a); *People v Railer*, 288 Mich App 213, 218-219; 792 NW2d 776 (2010). We also note that while refraining from physical force, defendant exploited the situation to confine the victim to her car. Particularly, the victim's baby was in the backseat strapped in a car seat, and exiting would have required the victim to leave her daughter in the car. Also, while defendant did not have a weapon, based upon his placement of his hands, the victim feared he might be armed. Finally, defendant told the victim he was being chased by someone trying to kill him. In actuality, he was being pursued by Wal-Mart security personnel. This lie led the victim to believe there was a danger of violence outside the car and compelled her to follow defendant's orders. Considering the evidence in a light most favorable to the prosecution we conclude the evidence was sufficient to establish defendant's restraint of the victim.

Finally, defendant claims he did not have possession of the car, and therefore, the evidence is insufficient to support his unlawful driving away of a motor vehicle conviction. We disagree. Under MCL 750.413, defendant cannot "willfully and without authority, take possession of and drive or take away . . . any motor vehicle, belonging to another." Admittedly, defendant was seated in the passenger seat, and he did not touch the pedals, gears, keys, or steering wheel. However, the statute does not require that defendant himself drive the car; the statute requires possession. MCL 750.413. Possession includes constructive possession, which exists when defendant "knowingly has the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons." *People v*

[1] Although leave to appeal has been granted on this issue, *People v Williams*, 489 Mich 856; 795 NW2d 15 (2011), this does not diminish the precedential effect of this Court's published opinions. MCR 7.215(C)(2).

Hill, 433 Mich 464, 470; 446 NW2d 140 (1989), quoting *United States v Burch*, 313 F2d 628 (CA 6, 1963). It is clear defendant intended to use the car to escape the pursuing Wal-Mart security employee. For this purpose, he entered the vehicle and placed the victim in fear, thereby obtaining the power necessary to compel her compliance. He locked the doors, and he ordered the victim to drive. In light of his exercise of control over the victim, the trial court reasonably concluded defendant had possession of the vehicle for purposes of MCL 750.413.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Pat M. Donofrio
/s/ Karen Fort Hood