STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 17, 2014
v	No. 315547 Wayne Circuit Court
NATHAN DEAN JOHNSON, Defendant-Appellant.	LC No. 12-010454-FH

Before: BECKERING, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

Defendant, Nathan Johnson, appeals as of right his bench trial convictions of unarmed robbery, MCL 750.530, operating a motor vehicle while intoxicated, MCL 257.625(1)(a), fleeing and eluding a police officer in the third degree, MCL 257.602a(3)(a), and two counts of assaulting, battering, obstructing, or endangering an officer performing his or her duties, MCL 750.81d(1). The trial court sentenced defendant to 7 to 15 years' imprisonment for his unarmed robbery conviction and 1 to 5 years' imprisonment for his fleeing and eluding a police officer in the third degree conviction. Defendant was sentenced to time served for his convictions of operating a motor vehicle while intoxicated and assaulting, battering, obstructing, or endangering an officer performing his or her duties. We affirm.

Defendant contends that his unarmed robbery conviction was not supported by sufficient evidence. We disagree.

When reviewing a sufficiency of the evidence claim, "[w]e examine the evidence in a light most favorable to the prosecution, resolving all evidentiary conflicts in its favor, and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond reasonable doubt." *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010). The elements of an offense may be proven by circumstantial evidence and the reasonable inferences drawn from that evidence. *People v Solmonson*, 261 Mich App 657, 661-662; 683 NW2d 761 (2004). The prosecution does not need to "negate every reasonable theory consistent with the defendant's innocence, but need merely introduce evidence sufficient to convince a reasonable jury in the face of whatever contradictory evidence the defendant may provide." *Id*. at 661 (quotation marks and citations omitted).

"To be guilty of unarmed robbery, a defendant must (1) feloniously take the property of another, (2) by force or violence or assault or putting in fear, and (3) be unarmed." *People v Harverson*, 291 Mich App 171, 177; 804 NW2d 757 (2010). "Unarmed robbery is a specific intent crime for which the prosecution must establish that the defendant intended to permanently deprive the owner of property." *Id.* "Because intent may be difficult to prove, only minimal circumstantial evidence is necessary to show a defendant entertained the requisite intent." *Id.* at 178. Furthermore, "the intent to permanently deprive includes the retention of property without the purpose to return it within a reasonable time or the retention of property with the intent to return the property on the condition that the owner pay some compensation for its return." *Id.*

The prosecution presented sufficient evidence to support defendant's conviction for unarmed robbery. First, the evidence presented at trial showed that defendant walked into a CVS store and took a 12-pack of beer that he knew he had not purchased. In fact, defendant asked Barbara George, the cashier at the front desk, if he could take the beer because he had a rough day. George told defendant he could not take the beer. This clearly shows that defendant knew the beer belonged to CVS. Furthermore, defendant took the beer from the CVS. Thus, the prosecution presented sufficient evidence to prove that defendant feloniously took the property of another. *Id.* at 177. In addition, the prosecution presented sufficient evidence to prove that defendant intended to permanently deprive CVS of the beer. Defendant asked to take the beer, was told that he could not take it, walked toward the coolers (appearing as if he were returning the beer to the coolers), and then he left the store with the beer. Defendant was intoxicated. This leads to the reasonable conclusion that defendant intended to take the beer and consume it, which constitutes a permanent deprivation.

Second, and contrary to defendant's main argument, the evidence showed that defendant took the 12-pack of beer by force or violence. *Id.* Erin Jackson, the CVS manager, testified that, when defendant exited the CVS and she attempted to stop him from taking the beer, he pushed her with the 12-pack of beer with enough force that Jackson fell to the ground.[1] This Court has held that the unarmed robbery statute, 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." *People v Passage*, 277 Mich App 175, 178; 743 NW2d 746 (2007). Because defendant used force or violence in trying to exit the CVS, the prosecution presented sufficient evidence that defendant used force or violence during the robbery.

Third, there was no evidence that defendant was armed. *Harverson*, 291 Mich App at 177. Thus, the prosecution presented sufficient evidence of the third element of unarmed

[1] Defendant incorrectly argues in his brief on appeal that "Ms. Jackson never appeared as a witness." Jackson testified at the bench trial on February 21, 2013.

robbery. A rational trier of fact could have determined that the prosecution proved every element of the crime charged beyond a reasonable doubt.[2]

Affirmed.

/s/ Jane M. Beckering
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher

[2] To the extent defendant argues that his intoxication was a defense to his conduct, MCL 768.37 has abolished voluntary intoxication as a defense, except in a limited set of circumstances not at issue here.