

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANK CHARLES BEATTY,

Defendant-Appellant.

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UNPUBLISHED  
April 16, 1996  
ON REHEARING

No. 150822  
LC No. 91-006746

Before: Holbrook, Jr., P.J., and Michael J. Kelly and D.J. Kelly,\* JJ.

PER CURIAM.

This Court issued an unpublished per curiam opinion on October 24, 1995, affirming defendant's conviction. Defendant moved for rehearing because this Court did not address an issue raised in his original appeal. We granted rehearing, and now affirm.

Defendant asserts that insufficient evidence was presented at the bench trial to support his conviction of larceny from a person, MCL 750.357; MSA 28.549. We disagree.

When reviewing whether sufficient evidence was presented to support a criminal conviction in a bench trial, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the charged offense had been proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 269-270; 380 NW2d 11 (1985); *People v Legg*, 197 Mich App 131, 132; 494 NW2d 797 (1992). The offense of larceny from a person requires proof beyond a reasonable doubt that (1) the defendant took someone else's property without consent, (2) the property was moved, (3) the property was taken from the complainant's immediate area of control or presence, and (4) the defendant intended, at the time the property was taken, to permanently deprive the owner of the property. See CJI2d 23.3; *People v Gadsen*, 348 Mich 307; 83 NW2d 227 (1957). Because defendant presented a claim of right theory at trial, the prosecution was also required to prove beyond a reasonable doubt that the defendant took

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\* Circuit judge, sitting on the Court of Appeals by assignment.

the property without an honest, good-faith belief that he had a legal right to do so. See CJ12d 7.5; *People v Henry*, 202 Mich 450; 168 NW2d 534 (1918).

Here, the evidence showed that on May 3, 1991, defendant gave his mother \$800 in cash, of which \$400 was to be given to his father as repayment “for past loans” and the other \$400 was to be held for defendant. Later that day or the next, defendant demanded that his mother return \$300, which she did. The following day, when defendant’s mother refused to return the other \$100 to defendant, he went to a hotel owned by his parents and told the desk clerk to move aside because his parents owed him money and they would not give it to him. He kicked in the locked office door and took money from the cash drawer, then he picked up a shotgun, which was at the hotel for security purposes, and shot the locks off a safe, and took more money. Defendant shot one of the lobby telephones, then left the premises, taking a total of \$410 and the shotgun with him.

In support of his claim-of-right defense, defendant testified that he intended for his mother to hold the entire \$800 for him, and that after she returned the \$300, he believed that he was still owed \$500. The trial court, sitting as trier of fact, stated that the “bottom line issue” was whether the prosecution had proven beyond a reasonable doubt that the “defendant took the money in the hotel there without an honest good faith belief that he had a legal right to the money taken.” After finding that defendant “knew full well that the \$400.00 for his father was to repay part of the money previously given to him at various times by his father,” the court found “beyond a reasonable doubt that the defendant’s belief was not an honest, good faith belief of a legal right to the extent of \$310.00.” The court found defendant guilty of larceny from a person.<sup>1</sup>

The conflicting evidence regarding the element of specific intent to steal created a factual issue for the trier of fact to resolve. See *People v Pohl*, 202 Mich App 203, 205-206; 507 NW2d 819 (1993). Viewing the evidence in a light most favorable to the prosecution, we conclude that sufficient evidence was presented to permit the trier of fact to find beyond a reasonable doubt that defendant did not have an honest, good faith belief that \$310 of the money he took from the hotel was legally his money, and that he intended to permanently deprive the rightful owner of the money. Accordingly, defendant’s challenge to the sufficiency of the evidence must fail.

Our resolution in the original opinion, issued October 24, 1995, of defendant’s claim of ineffective assistance of counsel, remains unchanged.

Affirmed.

/s/ Donald E. Holbrook, Jr

/s/ Michael J. Kelly

/s/ Daniel J. Kelly

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<sup>1</sup> At the close of the prosecution's proofs, the trial court granted defendant's motion for a directed verdict as to the original charge of armed robbery, finding that there was no evidence of an assault. The court tried defendant on the reduced charge of larceny from a person.