

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND LOUIS TREADWAY,

Defendant-Appellant.

UNPUBLISHED

November 15, 1996

No. 176988

LC No. 94-67671-FH

Before: Gribbs, P.J., and Markey and T.G. Kavanagh,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of larceny from a person, MCL 750.357; MSA 28.589. He then pleaded guilty to being an habitual offender, fourth offense, MCL 769.12; MSA 28.1084. Defendant appeals as of right. We affirm.

The complainant testified that while she was using a pay telephone, her key chain/wallet was resting on top of a loaf of bread that sat on the inside ledge of the telephone cabinet. Defendant approached and briefly spoke with the complainant. When she finished her telephone call, she realized that her key chain/wallet was missing. It was subsequently found on defendant's person. Defendant claimed that he found the item at a pay telephone adjoining the one the complainant had used. The complainant testified that she originally went to the adjoining telephone but found that it was out of order and therefore moved to the other telephone.

Defendant argues that the trial court erred in finding that the wallet was taken from the victim's presence or immediate area of control, which is an element of the crime of larceny from a person. See *People v Ainsworth*, 197 Mich App 321, 323-324; 495 NW2d 177 (1992). Upon viewing the evidence in a light most favorable to the prosecution and determining that a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt, we find that there was sufficient evidence to support this finding and defendant's conviction. *People v Petrella*, 424 Mich 221, 269; 380 NW2d 11 (1985); *People v Lugo*, 214 Mich App 699, 710; 542 NW2d 921 (1995).

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

The victim testified that her key chain/wallet was on the ledge of the public telephone she was using. Although defendant claimed that he took the item from the adjoining pay telephone, the trial court concluded that the victim's testimony was more credible, finding that the keys were "right there with her on the same side as the bread." Moreover, another person who had spoken to the complainant attempted to use the other telephone before defendant and presumably would have discovered her wallet had it been left on the ledge of the malfunctioning phone. In a bench trial, the determination of credibility is a matter for the trial court. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). Special deference should be given to a trial court's findings when they are based upon its assessment of the witnesses' credibility. See *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990); *Daniels, supra*. We therefore defer to the trial court's determination that the complainant was credible and defendant was not.

We acknowledge that the trial court also found, in the alternative, that even if the property had been in the adjoining telephone cabinet, it still would have found the property to be within the complainant's control. Because this alternative finding was not the basis upon which the court convicted defendant, however, we need not address whether this finding satisfied the requirement that the property was or could have been taken from the victim's presence or immediate area of control.

Affirmed.

/s/ Jane E. Markey

/s/ Roman S. Gibbs

/s/ Thomas Giles Kavanagh