STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

COREY PEARSON,

Defendant-Appellant.

UNPUBLISHED
December 27, 1996

No. 180951
LC No. 94-000139 FH

Before: Hood, P.J., and Neff and M.A. Chrzanowski*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted as charged of unarmed robbery, MCL 750.530; MSA 28.798. The trial court sentenced him to four to twenty years' imprisonment. He appeals as of right. We affirm.

After witnessing defendant's involvement in a car accident, a witness drove his vehicle in front of defendant's vehicle, forcing him to stop. Both defendant and the witness got out of their vehicles and defendant assaulted the witness. Defendant testified that while forcing him to stop, the witness was yelling racial slurs at him. The witness testified that after defendant struck him several times in the face, defendant stated to the witness, "This is going to cost you twenty bucks." The witness opened his wallet and informed defendant that he had only eleven dollars. Defendant took the eleven dollars, and told the witness that it was not enough money and that they'd have to go to a bank. The witness told defendant that the bank was closed, and defendant asked him if he had an ATM card, to which the witness replied he did not. At trial, defendant admitted to the assault, but denied requesting or taking any money. Defendant's testimony was corroborated by that of his passenger.

Defendant first contends that there was insufficient evidence to support the finding that defendant possessed the requisite specific intent to rob the witness. We disagree. We review a claim of insufficiency of the evidence by examining the evidence in a light most favorable to the prosecution to determine whether a rational fact-finder could find the essential elements of the offense proved beyond a reasonable doubt. *People v Baker*, 216 Mich App 687, 689; 551 NW2d 195 (1996). The elements

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

of the offense, including intent, may be proved through circumstantial evidence and reasonable inferences drawn from that evidence. *Id.*; *People v Medlyn*, 215 Mich App 338, 344; 544 NW2d 759 (1996).

To convict a defendant of unarmed robbery, the prosecution must prove that the defendant: (1) committed a felonious taking of property from another person; (2) through force or violence or assault or putting in fear, while (3) unarmed. *People v Johnson*, 206 Mich App 122, 125-126; 520 NW2d 672 (1994). "[W]hen unarmed robbery is accomplished through fear, it is not necessary that the defendant have had a larcenous intent at the time the defendant committed the act which initially induced the fear," but rather, to determine whether a robbery was committed the fact-finder must look to whether the victim had a reasonable belief that he would suffer injury if he did not comply with the demand. *People v Hearn*, 159 Mich App 275, 281-282; 406 NW2d 211 (1987). Thus, evidence that a victim surrendered property upon demand without protest or struggle after the person making the demand has subjected the victim to violence or threats of violence is sufficient to prove unarmed robbery because it is evident from the request itself that the person making such a demand is relying upon the continuing effect of the fear he or she had created to effect compliance. *Id.* at 282.

Defendant argues on appeal that he never intended to rob the victim, but rather that he was requesting twenty dollars as remuneration for the inconvenience he had been caused by being forced to stop for the accident.[1] Defendant contends that the assault initiated from his anger at being forced to stop, and not from his intent to rob. Defendant's argument is disingenuous When viewed in the light most favorable to the prosecution, the evidence presented in this case is sufficient for the jury to reasonably infer that defendant purposely used the fear already present from the assault to accomplish a larceny, that the witness complied with defendant's request for money to avoid further injury, and that defendant therefore had the requisite intent to rob. We find that the prosecution presented sufficient evidence to prove beyond a reasonable doubt defendant's intent to rob.

Defendant next argues that the trial court abused its discretion in admitting defendant's prior conviction of attempted larceny in a building. Defendant contends that the prejudicial impact of the admission of defendant's prior conviction substantially outweighed its probative value as impeachment evidence and should have rendered the evidence inadmissible.

The trial court has the discretion to admit evidence of a prior conviction for impeachment purposes, and we will not reverse absent an abuse of that discretion. *People v Coleman*, 210 Mich App 1, 6; 532 NW2d 885 (1995). A witness' credibility may be impeached with prior convictions, MCL 600.2159; MSA 27A.2159, but only if the convictions satisfy the criteria set forth in MRE 609, *People v Cross*, 202 Mich App 138, 146; 508 NW2d 144 (1993). MRE 609(a) provides:

> For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall not be admitted unless the evidence has been elicited from the witness or established by public record during cross examination, and
>
> (1) The crime contained an element of dishonesty or false statement, or

(2) the crime contained an element of theft, and

(A) the crime was punishable by imprisonment in excess of one year or death under the law under which the witness was convicted, and

(B) the court determines that the evidence has significant probative value on the issue of credibility and, if the witness is the defendant in a criminal trial, the court further determines that the probative value of the evidence outweighs its prejudicial effect.

Crimes of theft are minimally probative, and are thus admissible only if the probative value outweighs the prejudicial effect. *People v Allen*, 429 Mich 558, 595-596; 420 NW2d 499 (1988). The probativeness and prejudice are to be measured by the following factors:

> For purposes of the probative value determination required by subrule (a)(2)(B), the court shall consider only the age of the conviction and the degree to which a conviction of the crime is indicative of veracity. If a determination of prejudicial effect is required, the court shall consider only the conviction's similarity to the charged offense and the possible effects on the decisional process if admitting the evidence causes the defendant to elect not to testify. The court must articulate, on the record the analysis of each factor. [MRE 609(b).]

Because robbery contains an element of theft, it is admissible under MRE 609 if it satisfies the *Allen* balancing test. *Cross, supra,* at 146. In this case, the prior attempted larceny offense involves theft and is therefore minimally probative. However, the conviction is only two years old, adding to the probative value. Although both the charged and prior offenses involve an element of theft, the dissimilarity between larceny in a building, and an unarmed robbery resulting from a car accident and subsequent assault, reduces the prejudicial effect. *See Cross, supra* at 147. The trial court's ruling that the prior conviction was admissible apparently had no chilling effect on defendant's choice to testify, as defendant elected to testify despite the ruling. Additionally, defendant's testimony was corroborated by another witness, reducing the prejudicial effect of the prior conviction evidence.

The prejudicial impact of the admission of defendant's prior conviction of larceny in a building did not outweigh its probative value as impeachment evidence. Therefore, the criteria set forth in MRE 609 were satisfied and the trial court did not abuse its discretion in admitting defendant's prior conviction.

Affirmed.

/s/ Harold Hood
/s/ Janet T. Neff
/s/ Mary A. Chrzanowski

[1] We note that at trial defendant denied ever requesting or receiving money from the complainant.