

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES AARON LOCKETT,

Defendant-Appellant.

UNPUBLISHED

April 4, 1997

No. 189652

Detroit Recorder's Court

LC No. 95-003679

Before: Michael J. Kelly, P.J., and Saad and H.A. Beach,* JJ.

PER CURIAM.

Defendant appeals his bench trial conviction for assault with intent to rob while unarmed, MCL 750.88; MSA 28.283. We affirm.

Defendant argues that the prosecution failed to present sufficient evidence to support his conviction. We disagree. Conviction of assault with intent to rob while unarmed requires proof of the following elements: (1) an assault with force and violence; (2) an intent to rob and steal; and (3) defendant being unarmed. *People v Chandler*, 201 Mich App 611, 614; 506 NW2d 882 (1993). While this Court has held that in order to sustain a robbery conviction the intent to rob must be contemporaneous with the application of force, *People v Himmelein*, 177 Mich App 365, 379; 442 NW2d 667 (1989), the entire transaction should be viewed as a whole to determine the presence of the requisite intent at the time of the assault. *People v Beebe*, 70 Mich App 154, 158-160; 245 NW2d 547 (1976); *People v Herbert Sanders*, 28 Mich App 274, 276-277; 184 NW2d 269 (1970). These rules have been applied to both armed and unarmed robbery, and to the crime of assault with intent to commit robbery while armed, which is a lesser included offense of armed robbery. By analogy, we apply them to our review of defendant's conviction of assault with intent to commit robbery while unarmed.

Viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence to support defendant's conviction. Defendant demanded to know whether the elderly complainant had

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

any money or whether her check had come. This could reasonably be construed as a demand for money, and is sufficient evidence of an intent to rob. When the complainant responded that she had no money and that her check had not come, defendant struck her with his fist. Although the evidence does not reveal exactly how much time elapsed between the assault and defendant's arrest, the complainant did testify that the arrest occurred almost immediately thereafter. Although the complainant's testimony indicated that nothing was taken, and there was no evidence that defendant made any attempt to search her, a rational trier of fact could have found that but for the arrival of the police, defendant would have searched the complainant and taken any money that was available. Finally, defendant was unarmed at the time of the assault. A rational trier of fact, viewing this evidence in a light most favorable to the prosecution, could find beyond a reasonable doubt that defendant committed an assault with force and violence against the complainant, and that he possessed the intent to commit a robbery.

Affirmed.

/s/ Michael J. Kelly
/s/ Henry William Saad
/s/ Harry A. Beach