

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMON P. ROUNDTREE,

Defendant-Appellant.

UNPUBLISHED

January 13, 1998

No. 197260

Recorder's Court

LC No. 95-008818

Before: Gage, P.J., and Murphy and Reilly, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial conviction of armed robbery, MCL 750.529; MSA 28.797, and subsequent imposition of an enhanced sentence, based on defendant's fourth offender status, of 2 to 10 years' imprisonment.

Defendant first contends that the evidence was insufficient either to establish requisite intent to permanently deprive the owner of her personalty, or to establish that a weapon was used to perpetrate the theft of the victim's jewelry. Defendant contends there is lack of proof of intent to permanently deprive the owner of her property because defendant returned the property within a few days of the incident. However, it is no defense to a criminal charge containing an element of larceny that the property was subsequently recovered. The return of the property does not absolve the defendant of the criminal consequences of his acts, as a crime involving larceny is complete once a taking has been accomplished. *People v Chappelle*, 114 Mich App 364, 369; 319 NW2d 584 (1992).

Similarly, if after defendant stole the victim's personalty he assaulted her with a knife without simultaneously entertaining a larcenous intent, he would be guilty only of larceny from the person and felonious assault. *People v LeFlore*, 96 Mich App 557, 561-563; 293 NW2d 678 (1980). However, whether such was defendant's intent or not is a question to be determined by the trier of fact, based on an evaluation of all the evidence. No contention is made here that the trial court's findings of fact are clearly erroneous, and its conclusion that defendant possessed a larcenous intent at the time of the assault has record support. *People v LeFlore (After Remand)*, 122 Mich App 314, 319-320; 333 NW2d 47 (1983). As to both sufficiency questions, therefore, a rational trier of fact could have

found defendant's guilt of each element of the crime of armed robbery established beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 269-270; 380 NW2d 11 (1985).

Defendant also contends that he was improperly sentenced as a fourth offender, where no supplemental information was ever filed charging him with having been convicted of prior felonies. This argument overlooks the fact that defendant's crime was committed subsequent to May 1, 1994, the effective date of 1994 PA 110, which amended MCL 769.13; MSA 28.1085, to eliminate the prior practice of proceeding by supplemental information. Now, all that is required is that, within 21 days of the filing of the information, the prosecutor file and serve on defendant a notice of intent to seek an enhanced sentence. Such notice was filed on August 16, 1995, within 21 days of the filing of the information, and defendant's argument is therefore without merit. *People v Zinn*, 217 Mich App 340; 551 NW2d 704 (1996).

Affirmed.

/s/ Hilda R. Gage

/s/ William B. Murphy

/s/ Maureen Pulte Reilly