

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANNY EDWARD TALBERT,

Defendant-Appellant.

UNPUBLISHED

April 24, 2012

No. 302807

Calhoun Circuit Court

LC No. 2010-002699-FC

Before: HOEKSTRA, P.J., and SAWYER and SAAD, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529; first-degree home invasion, MCL 750.110a(2); and two counts of felonious assault, MCL 750.82. The trial court sentenced defendant as an habitual offender, third offense, MCL 769.11, to concurrent sentences of 25 to 50 years' imprisonment for the armed robbery conviction, 20 to 40 years' imprisonment for the first-degree home invasion conviction, and three to eight years' imprisonment for each of the two felonious assault convictions. Because we conclude that there was sufficient evidence to support the jury's verdict, we affirm.

Defendant's convictions stem from an incident occurring on August 10, 2010. At about 10:00 p.m. that night, Mary and Robert Pierce were at their home in Battle Creek, Michigan, when the couple heard banging at their front door. The door was hit four to five times before the doorjamb broke and the door opened. When the door opened, a man rushed into the home. The man's shirt was over his head, and he was armed with a board that he took from the Pierces' van, which was parked in the driveway at the side of the home. Mary heard the man state: "I'm coming in, this is an armed robbery." From the living room, Robert also heard the man state: "This is a robbery." The man demanded that the couple give him their money, and he hit Robert in the head with the board. The man then hit Mary with the board, after which Robert grabbed the man's shirt and began fighting with him. During the struggle, the man's shirt came off, and his face became visible. After five to ten minutes of fighting, the man left the home. As a result of the assault, Robert sustained a laceration to his head and a severe concussion. Mary was hit in the back and sustained an injury to her arm.

The police who responded to the Pierces' 911 call found the board and tee shirt just inside the door of the home. In addition, it appeared as if someone had gone through the contents of the van parked in the driveway; the doors of the van were open and some of the van's

contents were on the ground outside of the van. Defendant was stopped approximately half a mile from the Pierces' home because he matched the Pierces' description of the suspect. When he was stopped, defendant was not wearing a shirt, had an injury on his right forearm, and had what appeared to be a small amount of dried blood on the fingers of his left hand and on his right palm. After defendant consented to being searched, drug paraphernalia was found in defendant's pocket. Robert was transported by ambulance to the location where defendant was stopped, and after viewing defendant, Robert identified him as the person who broke into the home.

Defendant now appeals his armed robbery conviction as of right. Defendant contends that there was insufficient evidence to support his armed robbery conviction. Specifically, defendant maintains that there is no evidence that the victims were missing any property or that he actually took any of the victims' property.

We review claims of insufficient evidence de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). We view the evidence in the light most favorable to the prosecution to determine whether the evidence was sufficient to allow a rational trier of fact to find guilt beyond a reasonable doubt. *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002).

A conviction for armed robbery requires proof that (1) in the course of committing a larceny; (2) the defendant used force or violence against a person, assaulted a person, or placed a person in fear; and (3) either possessed a dangerous weapon, possessed an article used or fashioned to lead a reasonable person to believe that the article was a dangerous weapon, or represented that he possessed a dangerous weapon. *People v Chambers*, 277 Mich App 1, 7; 742 NW2d 610 (2007); MCL 750.529; MCL 750.530. "Larceny is the taking and carrying away of the property of another, done with felonious intent and without the owner's consent." *People v Gimotty*, 216 Mich App 254, 257-258; 549 NW2d 39 (1996) (citation omitted). As defined by MCL 750.530(2), "in the course of committing a larceny" includes actions taken during an attempt to commit a larceny, even if the larceny is not completed. *People v Williams*, 288 Mich App 67, 75; 792 NW2d 384 (2010), lv gtd 489 Mich 856 (2011); MCL 750.530(2). Proof that the defendant specifically intended to commit the crime and took action, beyond mere preparation, in furtherance of that intent is required in order to demonstrate attempt. *People v Burton*, 252 Mich App 130, 141; 651 NW2d 143 (2002) (citations omitted).

In this case, the evidence at trial indicated that defendant broke into the victims' home, announced that he was committing a robbery, and demanded money. Defendant hit the male victim in the head with a board, resulting in a laceration and a severe concussion. Defendant also hit the female victim, injuring her arm. Based on this evidence, when viewed in the light most favorable to the prosecution, a rational jury could find that defendant assaulted the victims while armed with a dangerous weapon and in the course of committing a larceny, i.e., while attempting to commit a larceny. Sufficient evidence supports defendant's armed robbery conviction.

In reaching our conclusion, we reject defendant's contention that the evidence, at most, supported only a conviction for attempted armed robbery because no evidence was presented that defendant permanently deprived the victims of any money or property. Since the 2004 statutory amendments to MCL 750.529 and MCL 750.530, "a completed larceny is no longer required for a conviction of armed robbery." *Williams*, 288 Mich App at 73. "[T]he [revised] statutory

language specifically considers and incorporates acts taken in an attempt to commit a larceny, regardless of whether the act is completed.” *Id.* at 75. Accordingly, we conclude that sufficient evidence to prove defendant guilty of armed robbery beyond a reasonable doubt was presented to the jury.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Henry William Saad