

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
September 16, 2014

v

STEVEN LEE NELSON,

Defendant-Appellant.

No. 316065
Jackson Circuit Court
LC No. 07-004233-FH

Before: MURRAY, P.J., and DONOFRIO and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of two counts of unarmed robbery, MCL 750.530. Defendant was convicted on November 20, 2007, following a bench trial and was sentenced as a habitual offender, third offense, MCL 769.11, to concurrent prison terms of 8 to 20 years and 3 to 20 years. The sentences were consecutive to a paroled sentence that defendant was serving at the time of the offenses. After defendant failed to timely file a claim of appeal, on April 11, 2013, on stipulation of the parties, the trial court entered an order reissuing the judgment of sentence and defendant filed this appeal. For the reasons set forth in this opinion, we affirm.

I. FACTS

On July 22, 2007, Brandon Jeffery and Justin Draper were walking to a party store in Jackson to return 35 soda bottles for the deposit money to buy some worms for fishing or to buy something to drink. While walking to the store Jeffery and Draper saw two girls and two or three boys at a car wash across the street. The group called for Jeffery and Draper to cross the street and talk, but Jeffery and Draper refused.

While walking away, Jeffery saw two boys from the car wash cross the street and follow him and Draper. Eventually, the two boys caught up and one boy punched Jeffery in the back of the head. Jeffery testified that this boy wore a gray and black jersey with a black “72” on it. Draper testified that the boy who punched Jeffery had facial hair under his chin and a moustache. He wore a gray and black jersey with a “72” on it, black pants, and a black hat. The boy told Jeffery, “You, you were flicking me off.” Jeffery responded that he did not want to fight and that “I wasn’t flicking you off.” The boy told Jeffery to give him the bag of bottles he was carrying, but Jeffery refused. The boy then punched Jeffery in the jaw, and Jeffery dropped the bag of bottles. He and Draper then walked away. Draper was only five feet from Jeffery when

the assault occurred. Draper testified that he was fearful of being hurt at the time. Draper also testified that he did not run away during the confrontation because he feared that the other boy would chase him down. Jeffery and Draper walked down the street for a couple of blocks while Jeffery held his face, which was becoming numb.

Joshua Cummins was at the car wash drying off his truck. He saw three girls and two boys yelling across the street at Jeffery and Draper while they were carrying the bag of bottles. Cummins saw Jeffery and Draper walk away from the group. He also saw the two boys at the car wash cross the street and follow them. After he finished drying his truck, Cummins drove down the street to where all the boys had been walking. While driving, Cummins saw the two boys walking back to the car wash. They were carrying a bag of bottles. Cummins also saw Draper and Jeffery walking down the road in the opposite direction without the bag of bottles. Jeffery was holding his face.

Cummins pulled into a Subway parking lot near Jeffery and Draper and asked them what happened. After Jeffery told him, Cummins called 911. After five to ten minutes, Cummins left to look for the two boys. Cummins searched the area for about 20 minutes, but was unable to locate them. Cummins drove back to the Subway parking lot.

Deputy Andrew Tisch, of the Jackson County Sheriff's Department, had been patrolling the area around the car wash. While driving down the street, Tisch noticed the two boys following Jeffery and Draper. He also saw several girls at the car wash yelling at the boys trying to get their attention. Tisch continued to drive down the street. He eventually turned around and drove past Cummins, Jeffery, and Draper in the Subway parking lot. Tisch then received the 911 call and met Cummins, Jeffery, and Draper at the Subway parking lot.

After Jeffery told Tisch what happened, Tisch got back in his car and searched for the two boys, but was unable to find them. Tisch returned to the Subway parking lot. He spoke with Jeffery, Draper, and Cummins about what happened and made a report. Jeffery told Tisch that the boy who punched him was wearing a black jersey, was white, and had a scruffy chin. It was later determined that several of Jeffery's facial bones were fractured.

Tisch continued to patrol the area and came upon defendant and another boy walking down a street. Tisch testified that defendant matched the suspect's description. He was wearing a black jersey and a baseball cap cocked to the side. Tisch pulled defendant away from the other individual and questioned him. Tisch testified that defendant appeared bothered and was giving him an attitude. Defendant told Tisch that he was at the car wash earlier that day, but did not remember an altercation. Defendant remembered seeing two boys walking across the street with a bag of bottles, but he did not cross the road and did not follow them. Defendant claimed that he had just put the jersey on and that a friend had been wearing the jersey earlier in the day.

At trial, Jeffery and Draper identified defendant as the person who committed the assault. Cummins also identified defendant in court as one of the two boys at the car wash that crossed the street. Cummins testified that defendant wore a jersey with black numbers, while the other boy wore a white T-shirt with shorts. Cummins testified that he was able to identify defendant because of his body type and facial features.

Defendant testified that he did not know either Jeffery or Draper. He did not recall seeing them walking across the street from him at any point.

The trial court found defendant guilty of two counts of unarmed robbery. It sentenced defendant to 8 to 20 years for the unarmed robbery against Jeffery and 3 to 20 years for the unarmed robbery against Draper. Defendant appeals as of right.

II. ANALYSIS

Defendant argues that there was insufficient evidence to support his conviction as to Draper.

We review de novo a challenge to the sufficiency of the evidence. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). In conducting our review, we view the evidence in a light most favorable to the prosecution to determine whether a reasonable trier of fact could find that the prosecution proved all of the essential elements of the charged offense beyond a reasonable doubt. *People v Jackson*, 292 Mich App 583, 587; 808 NW2d 541 (2011). To the extent we must interpret and apply relevant statutes, issues involving statutory interpretation present questions of law that we review de novo. *People v Gardner*, 482 Mich 41, 46; 753 NW2d 78 (2008).

MCL 750.530 proscribes unarmed robbery and it provides:

(1) A person who, in the course of committing a larceny of any money or other property that may be the subject of larceny, *uses force or violence against any person who is present, or who assaults or puts the person in fear*, is guilty of a felony punishable by imprisonment for not more than 15 years.

(2) As used in this section, “in the course of committing a larceny” includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after commission of the larceny, or in an attempt to retain possession of the property. [Emphasis added.]

Stated succinctly, “[t]o be guilty of unarmed robbery, a defendant must (1) feloniously take the property of another, (2) by force or violence or assault or putting in fear, and (3) be unarmed.” *People v Harverson*, 291 Mich App 171, 177; 804 NW2d 757 (2010).

Defendant claims that, under MCL 750.530(1), he cannot be “convicted of a robbery as to every person present who was in fear during a larceny.” Defendant’s argument centers on that part of MCL 750.530(1) that provides, “uses force or violence against *any person who is present, or who assaults or puts the person in fear. . . .*” Defendant contends that the phrases “any person who is present” and “the person” have different meanings. According to defendant, “the person” refers to the person who physically possessed the property during the commission of the larceny. Therefore, defendant argues, he cannot be convicted of an unarmed robbery for assaulting or placing in fear a person (Draper) who was only present during the larceny.

In *People v Rodgers*, 248 Mich App 702, 710-711; 645 NW2d 294 (2001), this Court addressed and rejected an analogous argument in the context of an armed robbery case. In

Rodgers, the defendant robbed a Speedy Muffler shop where three employees were present. *Id.* at 705. Only one of the employees tended the cash drawer and the defendant did not physically take money or personal property from the other two employees. *Id.* at 705-706. The defendant was convicted of three counts of armed robbery. *Id.* at 704. On appeal, the defendant argued that the evidence only supported a conviction of one count of armed robbery because he only took money from one of the employees. *Id.* at 706. In rejecting the defendant's argument, this Court explained as follows:

We reject defendant's argument . . . that a trial court should determine the number of armed robberies a defendant has committed by examining which of the alleged victims had the most superior right to possess the subject property. Rather, *the proper analysis is to determine whether the alleged victims had a right to possession of the subject property superior to that of the defendant.*

* * *

[T]he essence of armed robbery is not that the property belonged to the victim, but rather that it belonged to someone other than the thief . . . [T]he property must be taken . . . not necessarily from the owner, but from any person in possession thereof whose right of possession is superior to that of the robber . . . Further, the robbery statute makes no specific reference to the element of ownership of the money or goods taken by the robber. It is enough that the cash or personalty belongs to someone other than the thief.

Applying these principles, it is clear that a court must simply consider whether the victim had a greater right to the subject property than the defendant. If we accepted defendant's argument, and examined which of the alleged victims had the greatest right to the subject property, extraordinary consequences would result. A robber could enter a business, terrorize dozens of employees at gunpoint, and face only a single armed robbery conviction, as long as the robber fortuitously chose the most senior employee to hand over the company funds. Such a result would not conform with our Supreme Court's statement that the appropriate 'unit of prosecution' for armed robbery is the person assaulted and robbed . . . *When a defendant assaults and robs two or more persons during a single incident, he may be charged with and convicted of more than one armed robbery.* [*Id.* at 711-712 (emphasis added) (quotation marks and citations omitted).]

Rodgers is instructive in this case. Although *Rodgers* involved armed robbery and this case involves unarmed robbery, the difference is immaterial. The rationale in *Rodgers* focused on robbery in general and unarmed robbery is a necessarily-included lesser offense of armed robbery, the only difference being the use of a dangerous weapon. See *People v Reese*, 466 Mich 440, 446-447; 647 NW2d 498 (2002).

In this case, although Jeffery was carrying the bottles at the time of the robbery, the bottles were joint property of both Jeffery and Draper as they planned to spend the refund money together on items at the party store. Draper had a superior right to possession of the bottles as

compared to defendant. *Rodgers*, 248 Mich App at 711. Defendant took Jeffery and Draper's property by violence and force and by instilling fear. Defendant took the property from Jeffery by violence and force when he punched Jeffery in the face and forced Jeffery to drop the bag of bottles. At the same time, defendant took the property from Draper by depriving Draper of access and control over the bottles. Moreover, defendant accomplished the taking from Draper by placing Draper in fear. Draper testified that he was afraid of being hurt at the time defendant took the bottles. This evidence was sufficient to allow the trier of fact to conclude beyond a reasonable doubt that defendant committed an unarmed robbery against both Jeffery and Draper. MCL 750.530; *Rodgers*, 248 Mich App at 712 ("When a defendant assaults and robs two or more persons during a single incident, he may be charged with and convicted of more than one [robbery]").

Moreover, defendant's argument concerning the text of the statute is unpersuasive. The relevant portion of MCL 750.530(1) provides, "A person who, in the course of committing a larceny of any money or other property that may be the subject of larceny, uses force or violence against any person who is present, *or* who assaults or puts *the person* in fear, is guilty of a felony. . . ." (Emphasis added). "Or" is a disjunctive term indicating a choice between alternatives. *People v McQueen*, 293 Mich App 644, 671; 811 NW2d 513 (2011). Thus, there are two ways a person can commit an unarmed robbery: a person can use force or violence against "any person who is present" or a person can assault or put "the person" in fear. "The person" refers specifically to the person already mentioned in the statute—i.e. "any person who is present." Defendant's claim that "the person" refers to the person who physically possessed the property that was subject to the larceny reads language into MCL 750.530(1). The statute does not mention the person who possessed the property, nor does the statute indicate that the property must be physically taken from a person. "[This Court] may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *People v Haynes*, 281 Mich App 27, 29; 760 NW2d 283 (2008) (quotation omitted). Accordingly, "the person," in MCL 750.530(1), refers to "any person who is present," and defendant's conduct as to Draper fell within the purview of the statute.

In sum, there was sufficient evidence to support defendant's convictions of unarmed robbery as to both victims in this case.

Affirmed.

/s/ Christopher M. Murray

/s/ Pat M. Donofrio

/s/ Stephen L. Borrello