

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT STRICKLAND,

Defendant-Appellant.

UNPUBLISHED

May 3, 1996

No. 181031

LC No. 94-004787

Before: Griffin, P.J., and Smolenski and L. P. Borrello,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797. Defendant was sentenced to six to fifteen years' imprisonment. Defendant appeals as of right. We affirm.

On appeal, defendant first argues that there was insufficient evidence of the existence of a weapon to support his armed robbery conviction. We disagree. In reviewing the sufficiency of the evidence in a criminal case, we must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences derived therefrom can constitute satisfactory proof of the elements of a crime. *People v Reddick*, 187 Mich App 547, 551; 468 NW2d 278 (1991); *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984). In order to convict a person of armed robbery, the assailant must be "armed with a dangerous weapon, or

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

any article used or fashioned in a manner to lead the person so assaulted to reasonably believe it to be a dangerous weapon" MCL 750.529; MSA 28.797; *People v Turner*, 213 Mich App 558, 569; 540 NW2d 728 (1995); *People v Johnson*, 206 Mich App 122, 123; 520 NW2d 672 (1994).

Here, the victim testified that after defendant had torn a gold chain from the victim's neck, he placed a sharp, "pointy" object against her side and demanded that she hand over the rings she was wearing. Although the victim did not see the object with which she was threatened, she testified that she believed the object was a knife because it was sharp and pointy. Viewing this evidence in a light most favorable to the prosecution, we find there to be sufficient evidence to permit a rational trier of fact to conclude that defendant perpetrated the theft of the victim's rings by threatening the victim with either a knife or an object fashioned in a manner that reasonably led the victim to believe that defendant had a dangerous weapon. See, e.g., *People v Jolly*, 442 Mich 458, 469-470; 502 NW2d 177 (1993); *People v Hayden*, 132 Mich App 273, 294-295; 348 NW2d 672 (1984); *People v Davie*, 20 Mich App 526, 527; 174 NW2d 154 (1969). Accordingly, we conclude that there was sufficient evidence to find defendant guilty beyond a reasonable doubt of armed robbery.

Next, defendant contends that trial court erred by making a statement that some of the jury instructions were "garbage." However, defendant failed to object to the jury instructions and actually expressed satisfaction with the instructions as presented. Therefore, the issue is unpreserved and will be reviewed only for the existence of manifest injustice. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993); *People v Hoffman*, 205 Mich App 1, 22; 518 NW2d 817 (1994); see also *People v Gregg*, 206 Mich App 208, 211; 520 NW2d 690 (1994). We find no manifest injustice. When reviewed in context, it is clear that the trial court's statement -- a statement that it immediately retracted -- had neither the purpose nor the effect of denigrating the law upon which the jury was to decide the case. Further, a contextual review clarifies that the trial court was not instructing the jury to disregard its instructions. See *People v Kelly*, 423 Mich 261, 270-271; 378 NW2d 365 (1985); *People v Gaydosh*, 203 Mich App 235, 237; 512 NW2d 65 (1994); see generally *People v Davis*, 199 Mich App 502, 515; 503 NW2d 457 (1993).

Finally, defendant contends that he was denied the effective assistance of counsel. However, there was no evidentiary hearing on this issue below. Therefore, appellate review is limited to the record. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995). After a thorough review of the record, we conclude that defendant has neither sustained his burden of proving that counsel made a serious error that affected the result of trial nor overcome the presumption that counsel's actions were strategic. *People v LaVearn*, 448 Mich 207, 213; 528 NW2d 721 (1995); *People v Stanaway*, 446 Mich 643, 666, 687-688; 521 NW2d 557 (1994).

Affirmed.

/s/ Richard Allen Griffin
/s/ Michael R. Smolenski
/s/ Leopold P. Borrello