

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TARRYL LAJUAN JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

June 25, 1996

No. 173170

LC No. 93-006837

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LADARION DEJUAN BLAIR,

Defendant-Appellant.

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No. 173221

LC No. 93-006837

Before: Michael J. Kelly, P.J., and Young and N.O. Holowka,\* JJ.

PER CURIAM.

Defendants were convicted of armed robbery, MCL 750.529; MSA 29.797, and second-degree murder, MCL 750.317; MSA 28.549, for their involvement in the robbery of a pizza restaurant and the murder of a restaurant employee. Defendant Johnson was sentenced to serve seventeen to thirty years of imprisonment. Defendant Blair was sentenced to serve twenty to thirty years of imprisonment. Both appeal as of right. We affirm.

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

## NO. 173170 - DEFENDANT JOHNSON

### I.

Defendant Johnson first argues that he should have been sentenced as a juvenile instead of an adult. In reviewing a trial court's decision to sentence a juvenile as an adult, this Court applies a bifurcated standard. First, the trial court's findings of fact are reviewed for clear error. Findings of fact are clearly erroneous if, after examining the whole record, we are left with the definite and firm conviction that a mistake has been made. *People v Haynes*, 199 Mich App 593; 502 NW2d 758 (1993). Second, the trial court's ultimate decision to sentence a juvenile as an adult is reviewed for an abuse of discretion. *Id.*

We find no error. While some witnesses at the disposition hearing testified in favor of treatment under the juvenile system, there were conflicting viewpoints presented. The sentencing judge had to measure the credibility of the witnesses and their conclusions and proposals. Certain conclusions are not subject to serious dispute, however. Defendant was physically and mentally mature and "streetwise." He had prior involvement with the drug trade. Johnson was convicted of being involved in a particularly heinous crime, and defendant had a well-defined role in it. His actions were callous and predatory, and he showed an utter disregard for the value of human life.

Defendant's resistance to structured settings casts serious doubts on his amenability to treatment. While defendant argues that he has shown positive improvement in peer-based settings, it is his failure to resist destructive peer pressures which has brought him to this point. Defendant is easily influenced by violent friends, and that danger would not be significantly diminished if he were sentenced as a juvenile and released at age twenty-one. The court also found that the defendant was more likely to be rehabilitated through the long-term treatment programs available in the adult system.

The sentencing court's factual findings pertaining to the factors described MCL 769.1(3); MSA 28.1072(3) and MCR 6.931(E)(3) were not clearly erroneous. The court also did not abuse its discretion when, based on those findings, it sentenced defendant as an adult. *People v Passeno*, 195 Mich App 91, 103-105; 489 NW2d 152 (1992).

### II.

Defendant next challenges the sufficiency of the evidence against him. The defendant's conduct, viewed in a light most favorable to the prosecution,<sup>1</sup> shows an organized effort to rob the restaurant and place its employees in direct danger with firearms and knives. Some of the defendants were known to the restaurant manager, and entry was gained through trickery by defendant Johnson's cousin, an ex-employee of the restaurant. A reasonable juror could infer that the defendant and his cohorts knew that killing the employees would be the only way to evade identification. Defendant's well-defined role shows his prior knowledge of the plan and his willingness to create a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result. Therefore, we reject defendant's sufficiency challenge.

### III.

Defendant argues that his statement to police should have been suppressed. After a suppression hearing, the circuit court ruled that the statement was voluntary.

Defendant's first statement was made three hours after his arrest and a scant fifteen minutes after questioning started. Defendant admitted understanding his *Miranda* rights. The police used the standard rights form and defendant initialed it. Defendant maintained that he was threatened with physical violence if he did not make a statement, but the police denied the allegation. The circuit court was in a position to judge the credibility of the witnesses. Its findings were not clearly erroneous. *People v Kvam*, 160 Mich App 189, 196; 408 NW2d 71 (1987).

### IV.

Finally, defendant Johnson argues that he should have been permitted a corporeal lineup to test the identification testimony by the surviving store employee. We disagree. Defendant concedes he has no statutory or constitutional right to a lineup. See *People v Farley*, 75 Mich App 236, 238; 254 NW2d 853 (1979). The court has the discretion to order a lineup, yet here defendant has not shown an abuse of discretion. The circumstances underlying the witness's identification were not inherently suggestive and conducive to irreparable mistaken identification. *People v Watson*, 52 Mich App 211, 215-216; 217 NW2d 121 (1972), rev'd on other grounds, 396 Mich 870 (1976), quoting *United States v Williams*, 436 F2d 1166, 1168-1169 (CA 9, 1970). The store manager was familiar with defendant from prior visits to the restaurant, and he had ample opportunity during the lengthy robbery to view the defendant under ideal lighting conditions. See *People v Gwinn*, 111 Mich App 223, 249-250; 314 NW2d 562 (1981).

## **NO. 173221 - DEFENDANT BLAIR**

### I.

Defendant Blair also argues that the court erred by sentencing him as an adult. We find no error. The court considered the relevant factors in sentencing defendant. *People v Passeno*, 195 Mich App at 103-105. Several are noteworthy. Defendant had a long history of assaultive behavior and was adjudged to be temperamental, volatile, impulsive and oppositional. He had a leading role in the robbery, having held a gun to the manager's head and directing him to remove money from the cash register. Even if defendant received treatment in the juvenile system, one expert opined that defendant would likely remain a threat to the interests of society and public safety when released at age twenty-one. In reviewing defendant's background and the circumstances of this offense, we cannot say that the trial court's findings were clearly erroneous or that it abused its decision by sentencing defendant Blair as an adult.

## II.

Defendant argues that the prosecutor failed to show due diligence in its efforts to produce an absent witness. As a result, the witness's preliminary examination testimony was admitted into evidence, thereby depriving defendant of an opportunity to conduct further cross examination or otherwise demonstrate the witness's demeanor to the jury.

The driver of the getaway vehicle testified with some reluctance at the preliminary examination. He failed to appear for trial. Defendant argues that the prosecutor should have made special efforts to assure the witness's attendance given his earlier hesitation, and should have engaged in such efforts farther in advance of trial.

We disagree with defendant for the reasons stated in *People v Conner*, 182 Mich App 674, 681-682; 452 NW2d 877 (1990). Although the witness was reluctant, he had complied with an earlier subpoena to testify at the preliminary examination. The police followed all possible leads in trying to find the witness. When it became apparent that his mother was concealing defendant's whereabouts, the mother was taken into custody and presented to the court. It is apparent that the witness had no intention of complying with the trial subpoenas and was willing to allow his own mother to go to jail so that he might avoid testifying. Still, the prosecution engaged in diligent efforts to locate the witness and compel his attendance. The witness was unavailable under MRE 804(a)(5), and his prior testimony was properly read into evidence.

## III.

Defendant Blair also challenges the failure of the police to hold a lineup, and argues that the eyewitness identification should have been suppressed. We again disagree for the reasons stated in our discussion of defendant Johnson's challenge on the same point. The restaurant manager had seen Blair before the robbery (although he did not personally know him). He had ample opportunity to view defendant during the lengthy robbery under ideal lighting conditions.

For the foregoing reasons, the convictions and sentences of defendants Johnson and Blair are affirmed.

/s/ Michael J. Kelly  
/s/ Robert P. Young, Jr.  
/s/ Nick O. Holowka

<sup>1</sup> *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979).