

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM A. SUTTON,

Defendant-Appellant.

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UNPUBLISHED

September 17, 1996

No. 178357

LC No. 93-013970

Before: Jansen, P. J., and Reilly, and M.E. Kobza,\* JJ.

PER CURIAM.

Defendant was convicted after a bench trial of armed robbery, MCL 750.529; MSA 28.797, and subsequently pleaded guilty to being a fourth felony habitual offender, MCL 769.12; MSA 28.1084. Defendant was sentenced to six to ten years for the armed robbery. The trial court then vacated that sentence and, pursuant to the habitual offender provisions, entered an enhanced sentence of ten to thirty years of imprisonment. We affirm.

Defendant first argues that the trial court abused its discretion in denying him a new trial after an evidentiary hearing on his claim of ineffective assistance of counsel.<sup>1</sup> This Court finds, based on its independent evaluation of the record created below, that defendant was not denied the effective assistance of counsel, and therefore the trial court did not abuse its discretion in denying defendant's motion for a new trial. See *People v LaVearn*, 448 Mich 207, 213-216; 528 NW2d 721 (1995). Counsel testified that she did not challenge the line-up because she believed that it was fair and because an attorney was present during the proceeding. The trial court also indicated that it had evaluated the line-up at trial and found it to be fair. Defendant has not shown that counsel's failure to challenge the line-up was a serious error or that he was prejudiced. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994). Further, although defendant claims that counsel did not investigate substantial defenses, counsel testified that she explored the defenses suggested by defendant or by information he provided, including intoxication and diminished capacity, but found them to be without substance. The trial court found counsel more credible than defendant. This Court will defer to the trial court's "superior ability to

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

judge the credibility of witnesses.” *People v Bender*, 208 Mich App 221, 227; 527 NW2d 66 (1994). Further, defendant’s claim that his competency evaluation was perfunctory is not supported by the record.

Defendant next argues that the trial court erred in its findings of fact because they were not sufficiently explicit and because there was insufficient evidence to support those findings. We find no merit in either argument. Although the trial court focused on whether defendant was accurately identified, it specifically found that defendant assaulted the victim using a dangerous weapon and robbed him of money. These findings are sufficient to show that the trial court was aware of the factual issues in the case, of the elements of armed robbery and that it correctly applied the law to the facts. MCR 2.517; *People v Wardlaw*, 190 Mich App 318, 320-321; 475 NW2d 387 (1991). Further, to the extent that defendant challenges the sufficiency of the evidence, the complainant’s testimony that defendant robbed him by threatening him with a straight-edged razor, viewed in the light most favorable to the prosecution, was sufficient for a rational trier of fact to find that the essential elements of armed robbery were proven beyond a reasonable doubt. See *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

Finally, defendant argues that the trial court abused its discretion by imposing a sentence disproportionate to the offender. We disagree. In light of the circumstances surrounding the offense and the offender, we conclude that the sentence does not violate the principle of proportionality and the court did not abuse its discretion. *People v Gatewood (On Remand)*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 193626, issued 5/14/96).

Affirmed.

/s/ Kathleen Jansen  
/s/ Maureen Pulte Reilly  
/s/ Michael E. Kobza

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<sup>1</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).