

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFERY WAYNE GOULET,

Defendant-Appellant.

UNPUBLISHED

September 17, 1996

No. 182191

LC No. 94-001552

Before: Gribbs, P.J., and Young and W. J. Caprathe,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of robbery armed MCL 750.529; MSA 28.797, breaking and entering an occupied building, MCL 750.110; MSA 28.305, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to two years on the felony-firearm conviction and five to fifteen years each for the robbery and the breaking and entering convictions. He appeals as of right. We affirm.

Defendant first argues that the court's verdict of guilt was against the great weight of the evidence. We disagree.

Since this case was tried without a jury, no motion for new trial before the trial court was necessary to preserve the issue of whether the verdict was against the great weight of the evidence. MCR 7.211(C)(1)(c). When the verdict is against the great weight of the evidence, a new trial may be granted. *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993). In making this determination, the entire body of proofs must be reviewed. *Herbert, supra* at 475-476. The entire case turned on the identification testimony provided by two eyewitnesses. While all of the identification testimony was not entirely consistent, both witnesses unequivocally identified defendant in court and in the photo line-up. We conclude that the trial court's verdict was not clearly against the great weight of the evidence.

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

Next, defendant asserts that the trial court erred in denying his motion for mistrial. We disagree. The denial of a motion for mistrial is within the sound discretion of the trial court. *People v Gonzales*, 193 Mich App 263, 265; 483 NW2d 458 (1992). We will not disturb the trial court's decision on a motion for mistrial absent an abuse of discretion. *People v Cunningham*, 215 Mich App 652, 654; 546 NW2d 715 (1996). Only where there was an irregularity that was prejudicial to the defendant's rights and that deprived him of a fair trial should mistrial be granted. *Id.* Furthermore, reversal is not warranted unless the defendant affirmatively shows that prejudice resulted from the abuse of discretion. *People v Vettesse*, 195 Mich App 235, 246; 489 NW2d 514 (1992). A mistrial should be granted only when the asserted error is so egregious that the prejudicial effect cannot be removed in any other way. *Gonzales, supra* at 266. Moreover, we will not reverse where the alleged error is harmless. MCL 769.26; MSA 28.1096; MCR 2.613(A).

We conclude that any error resulting from the prosecutor's question regarding defendant's alleged gang connections was harmless. The court sustained defendant's objection to further questioning about gang membership. In a bench trial, the judge is credited with possessing sufficient understanding of the law to enable him to ignore such errors and decide the case based solely on the evidence properly admitted during trial. *People v Jones*, 168 Mich App 191, 194; 423 NW2d 614 (1988). There is no indication that the trial judge did otherwise in this case. Therefore, the trial court did not abuse its discretion in denying defendant's motion for mistrial.

Affirmed.

/s/ Roman S. Gribbs
/s/ Robert P. Young, Jr.
/s/ William J. Caprathe