

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERMAINE MARCELL WOODSON,

Defendant-Appellant.

UNPUBLISHED

September 20, 1996

No. 176521

LC No. 93-006836

Before: Gribbs, P.J., and Marilyn Kelly and White, JJ.

PER CURIAM.

Defendant appeals his bench trial conviction of felony firearm, MCL 750.227b; MSA 28.424(2), and armed robbery, MCL 750.529; MSA 28.797, challenging the sufficiency of the evidence. We affirm.

At trial, Donald L. Perkins, the complainant testified that on June 4, 1993, at approximately 10:40 p.m., he was in the vicinity of the Wendy's restaurant parking lot at 18241 Plymouth Road in Detroit, attempting to make a phone call. Perkins had pulled his car up to the telephone and gotten out of the car to make a call. As he was dialing the number, he saw four men walking down the street. It was raining. He believed the men lived in his neighborhood so he paid little attention to them. When Perkins hung up the phone one of the men came up behind him:

. . . the guy put his arm around my neck, put the gun to my head. He say I got you fool. He say I got you. Give me your money. Give me your keys. You know, I was telling him, I say, I don't have any money. Where's your wallet? My wallet's in my pocket. It's in my pocket. My keys in my pocket. And they started beating me. A couple of 'em had guns. Two guys had guns. They started beating me with the gun. They told me to get down on the ground. They was kicking me and beating me, going through my pockets.

Perkins stated that all four men were beating him, but only two had guns. Perkins identified defendant as one of the men that robbed and beat him, and testified that defendant was the man who had his arm around Perkins' neck with the gun to the back of Perkins' head. Perkins further testified

that defendant beat Perkins in the head with his gun. The other man with the gun beat Perkins in the ribs and the other two men were kicking him. Perkins did not remember the color of the gun, but believed it was a .45 or a 9 millimeter. The men got into Perkins' car and drove away.

On cross-examination, Perkins stated that it was dark at the time of the incident and that he had never seen defendant before. Perkins stated he did not know who went into his pockets, but that it was more than one hand. On redirect examination, Perkins stated that the lighting in the parking lot was fair, and that he picked defendant and another man out of a line up.

Officer Raymond Zapalski testified that he investigated the incident as a result of a 911 call from the Wendy's parking lot at 18241 Plymouth Road. Zapalski got a description of Perkins' car, a general clothing description of the perpetrators, a description of the gun as one of unknown caliber, and an approximate time of the incident.

Officer George Porter testified that he received information over the radio of a vehicle and occupants wanted for an armed robbery and UDAA. Porter spotted the vehicle going at a high rate of speed and pursued it in an unmarked police car. The stolen vehicle stopped in the middle of a street and Porter started to exit his vehicle. Porter testified that at that point a man jumped from the driver's seat, and ran between two houses. Porter identified this man in court as defendant. Another passenger jumped from the vehicle and the other two remained in the back seat. Porter's partner chased defendant. Porter found a 38 caliber blue steel revolver under the driver's seat. On cross-examination, Porter testified that he looked under the driver's seat because one of the back-seat passengers had appeared to place something there.

Officer Gary Krupinski testified that on the evening of June 4, 1993 at 11:30 p.m., he was monitoring information over the radio that another crew was chasing a few subjects for RA-UDAA and was in that area. Krupinski saw defendant run from the back yard between two houses and run into a house.

Officer Nick Kyriacou testified that he responded to the radio call to the area of Rutland and Capitol to assist in finding the suspect. When Kyriacou arrived at the location, he and another officer entered the home to look for the perpetrator. He stated that he went to the basement and into a utility room, and observed defendant standing in a utility room on top of a big pile of clothes, undressing and "sweating profusely." There was eight dollars in cash lying on the floor.

Defendant testified that on the evening of June 4, 1993, he was with other men on Plymouth Road, near a Wendy's. The four men were walking on the right-hand side of the road approaching Wendy's. Wendy's was on the left side of the road. Defendant's attention was drawn to Wendy's when one of the four men told him that there was a man using the phone there. Defendant stated that two of his friends crossed the road. By the time defendant and the other friend were in the middle of Plymouth Road, his other friends had already come up to the man and the man was on the ground. Defendant and his friend then proceeded over to them. Defendant testified that he took the man's

wallet, but did not take his car. Defendant stated he did not have a gun and did not steal the man's vehicle, but did get into the stolen vehicle.

On cross-examination, defendant testified that there was only one gun, and that it belonged to Arnell Weatherton. Defendant stated that Weatherton, and not defendant, had grabbed the victim from behind, stuck the gun to his head and taken his keys. Defendant stated that Dwayne Richardson drove the car away. Defendant also stated that at no time did he drive the vehicle. Defendant stated that he was sitting in the back of the vehicle.

Defendant testified that when he was apprehended, he was at the house of a man he knew who lived on his street. Defendant stated he was not changing his clothes, and that when he realized the police were in the house, he was frightened because he had been drinking, and disrobing was the first thing that came to his mind.

The trial court found defendant guilty of armed robbery and felony firearm. Defendant argues his convictions should be reversed because the prosecutor failed to present sufficient evidence that defendant had a gun. We disagree.

In reviewing the sufficiency of evidence, this Court 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, amended 441 Mich 1201 (1992).

The elements of armed robbery are: (1) an assault, (2) a felonious taking of property from the victim's person or presence, and (3) the defendant must be armed with a weapon described in the statute. *People v Johnson*, 206 Mich App 122, 123; 520 NW2d 672 (1994). In the instant case, defendant disputes whether sufficient evidence was presented to establish that he had a gun when the robbery occurred. Defendant acknowledges his admission at trial that he took Perkins' wallet.

Viewed in the light most favorable to the prosecution, Perkins' testimony that defendant was the person who had his arm around Perkins' neck with the gun to the back of his head and beat defendant on the head with the gun was sufficient to establish that defendant was armed with a gun at the time the robbery occurred. We further note that even without this testimony there was sufficient evidence to show that defendant participated in an armed robbery.

Perkins testimony was also sufficient to establish beyond a reasonable doubt that defendant committed the crime of felony firearm by possessing or carrying a firearm during the commission of a felony.

Affirmed.

/s/ Roman S. Gribbs

/s/ Marilyn Kelly

/s/ Helene N. White

