

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

May 30, 1997

Plaintiff-Appellee,

v

No. 190186

Recorder's Court

MALCOLM EVANS,

LC No. 95-005413

Defendant-Appellant.

---

Before: Markey, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to four to fifteen years' imprisonment for the armed robbery conviction and two years' imprisonment for the felony-firearm conviction, the two sentences to run consecutively. We affirm.

Defendant argues on appeal that the evidence presented at trial was insufficient to support his conviction. We disagree. In determining whether sufficient evidence has been presented to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found 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); *People v Baker*, 216 Mich App 687, 689; 551 NW2d 195 (1996). This standard of review is applicable in bench trials. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379; 465 NW2d 365 (1990).

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 dangerous weapon or 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). A conviction of felony-firearm requires proof that the defendant carried or possessed a firearm during the commission or attempted commission of a felony. MCL 750.227b; MSA 28.424(2); *People v Williams (After Remand)*, 198 Mich App 537, 540-541; 499 NW2d 404 (1993).

In the instant case, complainant testified that a young man, whom he identified at the time of trial as defendant, came out from the “brushes [sic] on the side of” complainant’s house, pointed a small gun at him and said, “Give me the car.” Complainant told the man that he could have the car and that the keys were in it. Complainant further testified that defendant continued to pursue him up to his house; defendant then pointed the gun at complainant and told complainant to give defendant his jacket. Defendant took the jacket, which contained complainant’s wallet, money, credit cards, and his fire department badge.

During the foregoing encounter, defendant and complainant stood face to face less than six feet apart. There was nothing obstructing complainant’s view of defendant. Complainant further testified that after the robbery, he saw defendant on the street, reported this sighting to police, and later identified defendant in a police line-up as the individual who robbed him at gun-point. Further, the description that complainant gave police of his assailant matched, in general, the physical description of defendant noted by the police in the Interrogation Record. In particular, the police noted, consistent with complainant’s description, that defendant had a thin mustache and was missing teeth. Viewing the above evidence in the light most favorable to the prosecution, a rational trier of fact could have found that the essential elements of the crimes of armed robbery and felony-firearm were proven beyond a reasonable doubt.

The fact that four alibi witnesses testified as to defendant’s whereabouts at the time of the crime is not dispositive, but merely affirms that this case came down to a credibility contest. The court had an opportunity to assess the credibility of complainant as well as that of defendant’s alibi witnesses. The court noted the demeanor of complainant and also the motivation of the alibi witnesses, all relatives of defendant, to testify in the manner in which they did. Evidently, the court found complainant to be more credible. Assessing the credibility of the testifying witnesses is a matter for the trier of fact. This Court will not resolve it anew. *Vaughn, supra* at 380.

Defendant further argues that his sentence of four to fifteen years for the armed robbery conviction, although within the guidelines’ recommended range, is disproportionate. We disagree. Because defendant’s sentence falls within the guidelines’ recommended range of twelve to forty-eight months, his sentence is presumed to be proportionate. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). Defendant has failed to present unusual circumstances that would overcome the presumption of proportionality. *People v Price*, 214 Mich App 538, 548; 543 NW2d 49 (1995). Defendant’s age and employment do not constitute “unusual circumstances.” *People v Piotrowski*, 211 Mich App 527, 532-533; 536 NW2d 293 (1995); *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Finally, the trial court sufficiently articulated on the record the reasons for the sentence imposed. A court’s statement that it will sentence in accordance with the sentencing guidelines is sufficient to satisfy the articulation requirement. *People v Lawson*, 195 Mich App 76, 77; 489 NW2d 147 (1992).

We affirm.

/s/ Jane E. Markey  
/s/ Richard A. Bandstra  
/s/ Joel P. Hoekstra