

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDREW DORSEY MOORE,

Defendant-Appellant.

UNPUBLISHED

September 19, 1997

No. 190992

Recorder's Court

LC No. 95-001565-FC

Before: Markey, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals by right his bench trial convictions of carjacking, MCL 750.529a; MSA 28.797(a), assault with intent to commit murder, MCL 750.83; MSA 28.278, and felony firearm, MCL 750.227b; MSA 28.424(2),. We affirm.

Defendant first contends that the trial court erred in denying his motion to suppress the results of a corporeal identification proceeding before trial as the fruit of an unnecessarily suggestive proceeding irreparably conducive to misidentification. This argument is without foundation in the record, which reveals that at no time before or during trial did defendant move to suppress any identification testimony, as required to preserve the issue for appellate review. *People v Childers*, 20 Mich App 639, 645-646; 174 NW2d 565 (1969). In any event, as another lineup participant was exactly the same height as defendant and any difference in hairstyle was deemed unremarkable by the victim who made the identification, defendant has failed to carry the heavy burden of establishing that the proceeding was so unfairly conducted as to justify suppression of the eyewitness testimony, as opposed to leaving the weight of that testimony to be resolved by the trier of fact. *People v Kurylczyk*, 443 Mich 289; 505 NW2d 528 (1993).

The trier of fact found the eyewitness identification so convincing that he had “no doubt” that defendant was one of the two persons who robbed the victims of their valuables and vehicle at gunpoint, as contrasted with simply a reasonable doubt. No question is raised by defendant, other than as to identification, concerning any element of any of the offenses. A rational trier of fact could properly have

found defendant's guilt proven beyond a reasonable doubt based on the testimony presented. *People v Petrella*, 424 Mich 221, 269-270; 380 NW2d 11 (1985).

Affirmed.

/s/ Jane E. Markey

/s/ Janet T. Neff

/s/ Michael R. Smolenski