

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

---

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 191257

Recorder's Court

MEARL ELTON JONES, a/k/a JAMES E. LEWIS,

LC No. 95-004065-FC

Defendant-Appellant.

---

Before: Smolenski, P.J., and Fitzgerald and Gage, JJ.

DISSENT.

GAGE, J. (dissenting):

I respectfully dissent.

I do not believe that the evidence was sufficient to support defendant's conviction for armed robbery. In order to constitute armed robbery, there must be something more than a victim's subjective belief that his assailant is armed. *People v Saenz*, 411 Mich 454, 458; 307 NW2d 675, 679 (1981). "What cannot reach the jury is proof that only focuses on the subjective belief of the victim. In other words, there must be some objective evidence of the existence of a weapon or article." *People v Jolly*, 442 Mich 458, 468; 502 NW2d 177 (1993). Conviction of armed robbery requires a finding that the defendant was armed with an article which is in fact a dangerous weapon—a gun, knife, bludgeon, etc., or some article harmless in itself, but used or fashioned in a manner to induce the reasonable belief that the article is a dangerous weapon. *People v Banks*, 454 Mich 469, 473; 563 NW2d 200 (1997). To convict, the factfinder must make the determination that at the time of the robbery the defendant was in fact armed with something and not just that the victim thought he was armed. The determination must be based on the evidence. *Id.* The physical communication that a dangerous weapon exists, especially when accompanied by an oral threat that the assailant has the ability to use that weapon, will support a conviction for armed robbery. See *People v Krist*, 93 Mich App 425, 433; 287 NW2d 251 (1979).

At trial, evidence was presented that defendant told the complainant that defendant would need “the rest of the money” before delivering the promised goods. The complainant testified that defendant told him, “I know you got the rest of the money.” The complainant further testified that he then “looked over at [defendant] and at this time is when I thought what I saw was a blunt object, which I later described to the police looked like a blunt end of a gun” sticking out of defendant’s coat pocket. Defendant put his hand in the pocket containing the blunt object. When the complainant asked if defendant was robbing him, defendant replied, “What do you think?”

I do not believe that this testimony is sufficient evidence that defendant was in fact armed with a dangerous weapon or an object that the complainant might reasonably have believed to be a dangerous weapon in order to accomplish a robbery. Although the complainant testified that he gave defendant the money because he was scared, words or threats alone can never be dangerous weapons because the criminal statute is concerned with weapons, not words. See *Banks, supra* at 472-481. Indeed, defendant never really threatened the complainant with a weapon or with words. Given the complainant’s testimony, I would find that the evidence was not sufficient to convict defendant of armed robbery. I would vacate his conviction of armed robbery and remand to the trial court to enter a conviction of unarmed robbery and to resentence defendant on the unarmed robbery conviction. See *Id.* at 481.

/s/ Hilda R. Gage