

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY PERKINS,

Defendant-Appellant.

UNPUBLISHED

August 18, 2000

No. 214708

Wayne Circuit Court

LC No. 98-003732

Before: White, P.J., and Doctoroff and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of unarmed robbery, MCL 750.530; MSA 28.798. Defendant was sentenced to three to fifteen years’ imprisonment. We affirm.

Defendant first argues that the identification evidence presented at trial was insufficient to justify a rational trier of fact in finding beyond a reasonable doubt that defendant was the person that committed the robbery. We disagree. When reviewing a challenge to the sufficiency of the evidence in a bench trial, this Court reviews the evidence “in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Ortiz-Kehoe*, 237 Mich App 508, 520; 603 NW2d 802 (1999).

The elements of unarmed robbery are: (1) a felonious taking of property from another, (2) by force, by violence, by assault or by putting in fear, and (3) being unarmed. *People v Johnson*, 206 Mich App 122, 125-126; 520 NW2d 672 (1994). Defendant does not argue that the prosecution did not present sufficient evidence of the elements of unarmed robbery, but only argues that the prosecution did not present sufficient evidence that it was he who robbed the victim.

At trial, the victim testified that “[o]ne of them had big eyes and scars on the face. He was on my driver’s side, I’m looking right into his face.” The victim then identified defendant as the man who appeared on the driver’s side of the car and pulled the money out of his pocket while defendant’s companions pulled at his arm and neck. Approximately one half hour after the robbery, the victim described the perpetrator to Officer Skubik as having a rough or ruddy complexion and “bug eyes,” and accurately described defendant’s clothing. There was evidence that, at the time of defendant’s

arrest, defendant's eyes were swollen and his face was scarred from an automobile accident. Although the victim did not tell Officer Skubik that the perpetrator had scars on his face, he did tell Officer Skubik that the perpetrator had a rough complexion. Officer Cortes testified that the victim's description of the perpetrator was "pretty close" to defendant's actual appearance.

Defendant testified that he did not rob the victim, and that he arrived at his friend's house only fifteen minutes before he was arrested. Although defendant testified that he was walking back from the store with his friend after having purchased a "forty ounce" when he was arrested, Officer Cortes testified that neither defendant nor his friend were carrying any beverages when they were stopped. Defendant's mother testified that she dropped defendant off at his friend's house in the evening, around 7:00 or 8:00 p.m., although it is otherwise undisputed that defendant was in police custody at that time. Defendant and his companion did not have any of the proceeds of the robbery on them when they were stopped.

Viewing the evidence in a light most favorable to the prosecution, there is sufficient evidence on which the trial court could have found beyond a reasonable doubt that defendant was the person that robbed the victim. The victim identified defendant shortly after the robbery. The victim described the perpetrator as having either big or "bug" eyes and a rough or ruddy complexion. At the time of his arrest, defendant had swollen eyes and a scarred face. Officer Cortes testified that the victim's description of the perpetrator and the perpetrator's clothing was "pretty close" to defendant's appearance. On the basis of such testimony, the trier of fact could have found beyond a reasonable doubt that defendant was the perpetrator. We therefore conclude that the prosecutor presented sufficient evidence to support defendant's unarmed robbery conviction.

Defendant argues in his supplemental brief that the trial court's findings of fact regarding the identification of defendant were clearly erroneous. Specifically, defendant contends that, contrary to the trial court's finding that "both officers testified that the description was consistent and that it was a good description, as to this defendant that was given by the complainant," Officer Skubik never testified that the description given by the victim matched defendant's appearance. Defendant further argues that there was no credible evidence that defendant was one of the perpetrator's. We review a trial court's findings of fact in a bench trial for clear error. *People v Lester*, 232 Mich App 262, 271; 591 NW2d 267 (1998). A finding is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *People v Everard*, 225 Mich App 455, 458; 571 NW2d 536 (1997).

We agree that the trial court erred in stating that both officers testified that the victim's description of the perpetrator was consistent with defendant's appearance, and that it was a good description. While Officer Cortes testified that the victim's description of the perpetrator was "pretty close" to defendant's actual appearance, Officer Skubik testified that the victim's description was a "good description" because, based on that description, he "figured that [the perpetrator] would be an easy guy to spot." Officer Skubik, who was not present when defendant was arrested, never testified that the victim's description matched defendant's actual appearance.

Nevertheless, we find no clear error in the trial court's finding that defendant was the person that robbed the victim. The trial court's finding was supported by substantial evidence that defendant

was the perpetrator. The victim identified defendant shortly after the crime, and the description the victim gave to the police, which noted distinctive features such as a big or “bug” eyes and a rough or ruddy complexion, matched defendant's actual appearance. Moreover, defendant's testimony that he did not commit the robbery, but was merely walking home from a store where he purchased a beverage, was contradicted by Officer Cortes' testimony that neither defendant nor his companion were carrying a beverage when they were stopped. The trial court noted that this case was essentially a credibility contest. “Special deference is given to a trial court’s findings when based on credibility.” *People v Sherman-Huffman*, ___ Mich App ___; ___ NW2d ___ (Docket No. 217609, dec’d 5/26/2000) slip op p 2; *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). We find no clear error in the trial court’s finding that defendant was the person that robbed the victim.

Finally, defendant argues that the trial court erred in ordering restitution in the amount of \$800 where the presentence investigation report contained an error. The presentence investigation report lists an amount of \$800 as the total amount of loss reported by the victim. However, defendant did not object to the information contained in the presentence investigation report, nor did he object to the amount of restitution ordered or complain that he did not have the financial ability to pay restitution. A party may not challenge the accuracy of a presentence report unless the party raised the issue at or before sentencing. MCR 6.429(C). By failing to raise an objection to the amount of restitution, a defendant waives any claim of error. *People v Gahan*, 456 Mich 264, 276; 571 NW2d 503 (1997); *People v Grant*, 455 Mich 221, 243; 565 NW2d 389 (1997). Defendant has waived any claim of error here.

Affirmed.

/s/ Helene N. White

/s/ Martin M. Doctoroff

/s/ Peter D. O’Connell