

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIM ANDREW HENRY,

Defendant-Appellant.

UNPUBLISHED

July 29, 2003

No. 239434

Kalamazoo Circuit Court

LC No. 01-001059-FC

Before: Zahra, P.J., and Talbot and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of two counts of armed robbery, MCL 750.529, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b, entered after a jury trial. We affirm.

Defendant was charged with two counts of armed robbery and two counts of felony-firearm in connection with a robbery at a convenience store. The evidence showed that a man wearing a black or navy blue hooded sweatshirt, a mask, dark pants, dark shoes, and dark gloves entered the store, displayed a black revolver with a wooden handle, and demanded money. As the man ran from the scene money flew out of his backpack. An off-duty police officer saw the man run from the store, followed the man, and observed him enter a car occupied by another person.

Dario O'Neal testified that in return for his testimony at trial he was allowed to plead guilty of one count of unarmed robbery, MCL 750.530, in connection with the incident at the convenience store. He stated that he drove defendant to the store, and that while enroute defendant showed him a gun and told him to wait at a specific location. He waited at the location as directed. Shortly thereafter, defendant returned to the car and told him to leave the scene. O'Neal identified the black revolver with the wooden handle as the gun defendant carried on the night of the incident. O'Neal testified that he did not fabricate a story in order to obtain a plea agreement. Detective Szekely testified that O'Neal told him that he and defendant planned to rob the convenience store, and that O'Neal's assertions regarding defendant remained consistent.

The jury found defendant guilty as charged. The trial court sentenced defendant to concurrent terms of twenty-five to fifty years for the convictions of armed robbery, and to consecutive two-year terms for the convictions of felony-firearm. The minimum terms for armed

robbery were within the applicable statutory sentencing guidelines. Defendant did not receive credit for time served because he was on parole when he committed the instant offenses.

Defendant claims there was insufficient evidence to support the convictions. In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were established beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

The elements of armed robbery are: (1) an assault; (2) a felonious taking of property from the victim's presence or person; (3) while the defendant is armed with a weapon described in the statute. MCL 750.529; *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). An assault is an attempt to commit a battery, or an unlawful act that places another person in reasonable apprehension of receiving an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). The elements of felony-firearm are: (1) the possession of a firearm; (2) during the commission of, or the attempt to commit, a felony. MCL 750.227b; *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

We conclude there was sufficient evidence presented at trial to support defendant's convictions. O'Neal testified that defendant robbed the convenience store. Szekely confirmed that O'Neal identified defendant as the perpetrator from the outset, and that O'Neal's statement in this regard remained consistent. O'Neal was not offered a plea agreement until after he implicated defendant in the incident. The jury was properly instructed as to how it should evaluate O'Neal's testimony and any inconsistent statements he might have made. *Milstead, supra*. A store clerk identified a black revolver as the gun the robber displayed during the incident, and indicated that the sweatshirt found in defendant's girlfriend's apartment resembled the garment worn by the robber. O'Neal identified the black revolver as the weapon defendant carried on the night of the incident. Evidence connecting defendant to the gun and the sweatshirt was sufficient to allow the jury to infer that defendant perpetrated the robbery. *Vaughn, supra*. The evidence showed that defendant attempted to flee from his girlfriend's apartment when the police arrived. The jury was entitled to find that defendant attempted to flee the apartment and that he did so due to a guilty conscience. CJI2d 4.4; *People v Taylor*, 195 Mich App 57, 63; 489 NW2d 99 (1992). The evidence, viewed in a light most favorable to the prosecution, was sufficient to support defendant's convictions. *Wolfe, supra*.

Affirmed.

/s/ Brian K. Zahra
/s/ Michael J. Talbot
/s/ Donald S. Owens