

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID METCALF,

Defendant-Appellant.

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UNPUBLISHED

May 2, 2006

No. 260484

Wayne Circuit Court

LC No. 04-009393-02

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK LAMAR BARNETT,

Defendant-Appellee.

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No. 260485

Wayne Circuit Court

LC No. 04-009393-01

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Following a bench trial, defendant David Metcalf was convicted of armed robbery, MCL 750.529, and defendant Mark Lamar Barnett was convicted of armed robbery, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant Metcalf was sentenced to a prison term of 51 months to 15 years. Defendant Barnett was sentenced to concurrent prison terms of 51 months to 20 years for the armed robbery conviction and one to five years for the felon in possession conviction, and a consecutive two-year term for the felony-firearm conviction. Defendant Metcalf appeals as of right in Docket No. 260484, and defendant Barnett appeals as of right in Docket No. 260485. We affirm. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

Defendants were convicted of robbing Patrick Miller at gunpoint. Miller testified that defendant Metcalf gestured to him as Miller was riding his bicycle. Barnett then approached Miller, knocked him off his bicycle, and held a sawed-off shotgun to his chin. Barnett wrapped one arm around Miller and held the gun with the other, while Metcalf removed Miller's wallet

from his pocket. Barnett removed the money from Miller's wallet and threw the wallet on the ground.

Barnett and Metcalf both denied robbing Miller. They claimed that Miller paid Metcalf for drugs, and that Barnett took the payment money from Metcalf because Metcalf was selling drugs in Barnett's territory, and Miller owed Barnett money for drugs that Miller purchased earlier in the day. Barnett denied displaying a gun to Miller. The trial court found that Miller's testimony was credible, and that defendants' testimony was not.

In Docket No. 260484, defendant Metcalf argues that the evidence was insufficient to support his robbery conviction. When a defendant challenges the sufficiency of the evidence in a criminal case, we consider whether the evidence, viewed in a light most favorable to the prosecution, would warrant a reasonable juror to find guilt beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000); *People v Sexton*, 250 Mich App 211, 222-223; 646 NW2d 875 (2002). To convict a defendant of armed robbery, the trier of fact must find the following elements: "(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." *People v Ford*, 262 Mich App 443, 458; 687 NW2d 119 (2004)(citations omitted). To convict a defendant on an aiding and abetting theory, the trier of fact must find that: "(1) the crime charged was committed by the defendant or some other individual; (2) the defendant performed acts or gave encouragement that assisted in the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that [the defendant] gave aid and encouragement." *People v Moore*, 470 Mich 56, 67-68; 679 NW2d 41 (2004)(citation omitted, alteration original).

Miller's testimony established all the elements of armed robbery, and also established that Metcalf knowingly and intentionally assisted the commission of the offense. Metcalf argues that the trial court should have given credence to his and Barnett's testimony that there was no robbery. However, in reviewing a claim of insufficient evidence, we view the evidence in the light most favorable to the prosecution. *Nowack, supra* at 399. Furthermore, this Court defers to a trial court's determinations of witness credibility at a bench trial. MCR 2.613(C); *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000). The evidence was therefore sufficient to sustain Metcalf's armed robbery conviction on an aiding and abetting theory.

In Docket No. 260485, defendant Barnett argues that the evidence was insufficient to prove that he was armed with a weapon described in the armed robbery statute. MCL 750.529 provides that this element is satisfied if the defendant "possesses a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon, or who represents orally or otherwise that he or she is in possession of a dangerous weapon." An inoperable firearm is "apt to lead the victim to reasonably believe [it is a] dangerous weapon[] and for this reason [it] fall[s] within the provisions of the armed-robbery statute." *People v McCadney*, 111 Mich App 545, 551; 315 NW2d 175 (1981). Although Miller testified that he thought the sawed-off shotgun was too old and rusty to work properly, he also testified that he did not form this belief immediately, that he was scared when Barnett held the gun to his chin, and that he did not know for certain that the shotgun was inoperable. The trial

court did not err in finding that Miller's testimony was sufficient to show that Barnett was armed with a weapon within the meaning of the armed robbery statute.

Affirmed.

/s/ Helene N. White  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot