

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRYL M. KINER,

Defendant-Appellant.

UNPUBLISHED

July 11, 2000

No. 214123

Recorder's Court

LC No. 98-000356

Before: Jansen, P.J., and Hood and Saad, JJ.

MEMORANDUM.

Defendant appeals as of right from his conviction of armed robbery, MCL 750.529; MSA 28.797, following a bench trial. We affirm.

On appeal, defendant argues that insufficient evidence on the issue of identification was presented to permit the trier of fact to find defendant guilty beyond a reasonable doubt. Although defendant suggests that the lineup was unduly suggestive, he did not move to suppress the complainant's in-court identification or otherwise challenge the admission of evidence regarding the lineup. See *People v Lee*, 391 Mich 618, 626; 218 NW2d 655 (1974). Therefore, our review is limited to the specific issue raised on appeal, i.e., whether sufficient evidence was presented to sustain the trier of fact's verdict beyond a reasonable doubt.

In a bench trial, the trial judge sits as trier of fact and has the responsibility to observe the witnesses and assess the weight and credibility to be given to their testimony. An appellate court's task is to examine the record to determine whether the evidence was sufficient to warrant a verdict of guilty beyond a reasonable doubt. See *People v Garcia*, 398 Mich 250, 262-263; 247 NW2d 547 (1976). Our review of this record leads us to conclude that sufficient evidence identifying defendant as the perpetrator was presented to sustain his conviction. The totality of the circumstances demonstrate that the trier of fact did not clearly err in finding the complainant's identification of defendant to be reliable.

Contrary to defendant's argument, neither the fact that the complainant was told that the perpetrator would be in the lineup, nor the fact that insignificant physical differences existed between defendant and the other lineup participants, rendered the lineup unduly suggestive. *People v*

Kurylczyk, 443 Mich 289, 312 (Griffin, J), 318 (Boyle, J); 505 NW2d 528 (1994); *People v McElhaney*, 215 Mich App 269, 287; 545 NW2d 18 (1996). Such factors generally pertain to the weight of an identification and not to its admissibility. *People v Sawyer*, 222 Mich App 1, 3; 564 NW2d 62 (1997). Accordingly, notwithstanding defendant's alibi evidence, we find that sufficient evidence was presented to sustain his armed robbery conviction.

Finally, defendant has waived review of his corollary argument that his conviction was against the great weight of the evidence. An objection going to the weight of the evidence can be raised only by a motion for new trial before the trial court, *People v Bradshaw*, 165 Mich App 562, 565; 419 NW2d 33 (1988), and failure to do so waives the issue on appeal, *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997).

Affirmed.

/s/ Kathleen Jansen

/s/ Harold Hood

/s/ Henry William Saad