

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES E. TUCKER,

Defendant-Appellant.

UNPUBLISHED

October 23, 2003

No. 240851

Wayne Circuit Court

LC No. 01-008979-01

Before: Whitbeck, C.J., and Jansen and Markey, JJ.

PER CURIAM.

Defendant James Tucker appeals as of right from bench trial convictions for armed robbery¹ and possession of a firearm during the commission of a felony (felony-firearm).² The trial court sentenced Tucker to ten to fifteen years' imprisonment for the armed robbery conviction and a mandatory two years' imprisonment for the felony-firearm conviction. We affirm.

I. Basic Facts And Procedural History

On November 23, 2000, a robbery occurred at a Mobil gas station in Detroit. Abdul M. Bay, an employee of the gas station, had seen Tucker at the gas station several times before the day of the robbery. Bay stated that Tucker came into the gas station twice on the day of the robbery. The first encounter between Bay and Tucker was at approximately 2:00 a.m. when Bay asked Tucker to leave the store. The second encounter was at approximately 5:00 a.m. to 5:15 a.m.

During this second encounter, according to Bay, Tucker entered the store and manually locked the entry. Bay, who was in an enclosed counter area, told Tucker to leave. When Tucker did not comply, Bay left the enclosed area, and Tucker ran towards Bay. Bay then tried to return to the enclosed area and struggled with Tucker at the counter doorway, but Tucker successfully gained entry into the counter area, at which point Bay saw that Tucker was holding a gun. Bay

¹ MCL 750.529.

² MCL 750.227b.

grabbed the gun and pushed it away from him. During the struggle, Tucker squeezed and twisted Bay's arm and Bay fell to the ground.

According to Bay, Tucker then demanded that he open the register. Bay indicated that money from the register was on the counter. When Tucker approached the money, Bay fled the gas station and did not return until Tucker had left. After observing the cash register drawer and coins on the floor, Bay called the police with a description of the robber and indicated that the robber "hangs out [at] the gas station." Later that evening, the station supervisor verified that approximately \$900 was missing. In the following weeks, Bay viewed a photographic line-up at Detroit Police Headquarters, but did not identify anyone as the robber.

On July 23, 2001, an employee at the gas station called his supervisor to report that someone was at the gas station who had been seen there repeatedly before. The supervisor contacted the owner of the station, Fouad Dobaja. Dobaja went to the area across the street from the gas station and observed the person, then went to a nearby police station to report him. Police arrived at the gas station and stopped three people. Of these, only Tucker was arrested. However, Dobaja could not identify Tucker as the person the police had arrested or as the person he had seen at the gas station from across the street. A live line-up, which included Tucker, was then held on July 24, 2001. At that line-up, Bay identified Tucker as the person who had robbed the station.

II. Sufficiency Of The Evidence

A. Standard Of Review

Tucker argues that there was insufficient evidence regarding his identification as the perpetrator of the robbery. We review *de novo* the sufficiency of the evidence in a bench trial, viewing the evidence in a light most favorable to the prosecutor to determine whether the trial court found the necessary elements of the crime had been proven beyond a reasonable doubt.³ We accord deference to the trier of fact as to the credibility of witness identification.⁴

B. The Evidence Of Record

We conclude that the record below does not support Tucker's claim. Bay identified Tucker as being familiar to him from prior contact at the store. Bay did not incorrectly identify anyone else as the perpetrator when presented with a photographic line-up. Bay positively identified Tucker as the robber in a live line-up. Tucker does not contest the procedural propriety of any of the line-ups. The trial court specifically found that Bay had a more than adequate opportunity to observe the robber, and also found that money was missing from the store. Based on the trial record and viewing the evidence in a light most favorable to the

³ *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), *aff'd* 466 Mich 39 (2002).

⁴ *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

prosecution, a rational trier of fact could find beyond a reasonable doubt the elements necessary to convict Tucker of armed robbery and felony-firearm.

C. The Trial Court's Findings

Tucker further alleges, without reference to specific findings of the trial court, that the findings are clearly erroneous. A finding is clearly erroneous if the reviewing court is left with "a definite and firm conviction" that a mistake was made.⁵ In this case, Bay consistently and unambiguously identified Tucker as the perpetrator. It was confirmed that money was missing from the store. The trial court addressed the identification issue and found Bay credible based on his prior familiarity with Tucker, his consistent identification, and his opportunity to observe Tucker during the robbery. The trial court demonstrated that it was aware of the issues and made specific findings of fact. Based on a review of the entire record, we are not convinced that a mistake was made.

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Jane E. Markey

⁵ *People v Johnson*, 466 Mich 491, 497-498; 647 NW2d 480 (2002).