

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RASHEEM KENYATTA PAJER,

Defendant-Appellant.

UNPUBLISHED

October 21, 2008

No. 278958

Wayne Circuit Court

LC No. 06-013422-01

Before: Markey, P.J., and Sawyer and Kelly, JJ.

PER CURIAM.

Defendant appeals by right his bench trial convictions of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to 3 to 20 years imprisonment for the armed robbery conviction, and two years for the felony-firearm conviction. We affirm.

Defendant argues on appeal that the judge's findings of fact were clearly erroneous. We disagree. A trial court's findings of fact are reviewed for clear error and are clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that the trial court made a mistake. Significant deference is given to the trial court. *People v Frohriep*, 247 Mich App 692, 702; 637 NW2d 562 (2001).

The trial court found that police "recovered a black assault type rifle similar to the one used in the armed robbery" in defendant's bedroom. Defendant contends on appeal that because there was no testimony that an assault rifle was recovered from his bedroom, this finding was clearly erroneous. A police officer testified that a .22 caliber rifle was taken from defendant's bedroom at 15922 Wildemere. People's Exhibit 4, a photograph depicting the assault rifle found in defendant's bedroom, was shown to the victim who testified that the gun in the photograph was similar to the gun that was used to rob him. The court's finding that the black assault type rifle, similar to the one used in the armed robbery, was recovered from defendant's bedroom, is supported by the record and is not clearly erroneous.

Defendant also argues on appeal that there was insufficient evidence to convict him of armed robbery and felony-firearm. We disagree. A claim based on insufficiency of evidence is reviewed de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). In determining whether sufficient evidence has been presented in support of a conviction, this Court reviews the evidence in a light most favorable to the prosecution and determines whether a

rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Kanaan*, 278 Mich App 594, 618; 751 NW2d 57 (2008). A victim's identification of the perpetrator - - even if not 100 percent - - will sustain a conviction. *People v Czarnecki*, 241 Mich 696, 698; 217 NW2d 781 (1928); *People v Abernathy*, 39 Mich App 5, 7; 197 NW2d 106 (1972). The credibility of such testimony is a question for the finder of fact, which we do not resolve anew. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

To convict a defendant of armed robbery, the prosecution must prove that “(1) the defendant, in the course of committing a larceny of any money or other property that may be the subject of a larceny, used force or violence against any person who was present or assaulted or put the person in fear, and (2) the defendant, in the course of committing the larceny, either possessed a dangerous weapon, possessed an article used or fashioned in a manner to lead any person present to reasonably believe that the article was a dangerous weapon, or represented orally or otherwise that he or she was in possession of a dangerous weapon.” *People v Chambers*, 277 Mich App 1, 7; 742 NW2d 610 (2007); MCL 750.529.

Defendant contends that the prosecution failed to produce sufficient evidence of his participation in the armed robbery. We disagree. The victim identified defendant in a photo lineup and in court as the perpetrator of the robbery. Although the victim was not 100 percent certain that defendant was the person he saw and identified, the identification question was properly left for the finder of fact to resolve.

Viewed in a light most favorable to the prosecution, there was sufficient evidence presented by the prosecution that defendant committed armed robbery. The victim testified that defendant approached him with a gun, stating, “This is a robbery.” The victim described the gun as a brownish, assault type rifle. The thief stole the victim's pants containing his wallet, three or four credit cards, \$35 cash, and a Michigan identification card. Police recovered a credit card belonging to the victim in the dining room of Benjamin Odom's residence¹ where defendant and Odom were apprehended by the police while attempting to flee. Clearly, there was sufficient evidence for the judge, as the trier of fact, to find that the elements of armed robbery were proven beyond a reasonable doubt.

Defendant contends that because there was insufficient evidence of his participation in the armed robbery, the felony-firearm conviction must be vacated. As discussed *supra*, the prosecution presented sufficient evidence to prove that defendant committed armed robbery.

Last, defendant argues that there was insufficient evidence that defendant possessed the assault rifle found in his bedroom. Defendant's argument is based on the fact that he was found not guilty of possession of marijuana found in the bedroom, and thus, the judge's findings are inconsistent. But the prosecution was not required to prove, and the judge did not find, that defendant possessed the assault rifle at the point in time when the police found it. Rather, the

¹ Defendant and Odom were tried together; Odom was found guilty of larceny from the person, MCL 750.357.

prosecution was only required to prove that defendant possessed a firearm during the commission of the robbery. *Chambers, supra* at 7; MCL 750.529; MCL 750.227b.

We affirm.

/s/ Jane E. Markey
/s/ David H. Sawyer
/s/ Kirsten Frank Kelly