

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH REID GILLIS,

Defendant-Appellant.

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UNPUBLISHED

September 17, 1999

No. 209756

Montcalm Circuit Court

LC No. 97-000250 FC

Before: McDonald, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

A jury convicted defendant on the charges of armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to fourteen to thirty years of imprisonment on the armed robbery charge and imposed the mandatory sentence of two years on the felony-firearm charge. Defendant was also ordered to pay restitution in the amount of \$695. Defendant appeals as of right. We affirm.

Defendant argues that the trial court erred in refusing to appoint an expert on eyewitness testimony. Defendant contends that this witness would have provided critical testimony challenging the memory and perceptions of eyewitnesses testifying against him. The decision to appoint an expert witness is in the sound discretion of the trial court. MCL 775.15, MSA 28.1252. We find no abuse of discretion here.<sup>1</sup>

A trial court may appoint an expert witness for indigent defendants where the defendants have demonstrated that there is a material witness in their favor within the jurisdiction of the court, without whose testimony they cannot safely proceed to trial. MCL 775.15; MSA 28.1252. Our Supreme Court has interpreted the statute to require defendant to show a connection “between the facts of the case and the need for an expert.” See *People v Jacobsen*, 448 Mich 639, 641; 532 NW2d 838, 839 (1995), quoting from the dissent in *People v Jacobsen*, 205 Mich App 302, 309; 517 NW2d 323 (1995). The Supreme Court in *Jacobsen* held that “[w]ithout an indication that expert witness testimony would likely benefit the defense, it was not error to deny without prejudice the appointment of an expert witness.” *Id.* at 641.<sup>2</sup>

In this case, as in *Jacobsen, supra*, the trial court had reason to conclude that eyewitness identification was not a matter that required expert testimony. Both victims of the crime positively identified defendant at trial. Although other witnesses had only a brief encounter with the robbery suspects, one of those witnesses also positively identified defendant. No showing was made by defense counsel that the particular facts of this case required an expert to undermine the reliability of those three identifications. In addition, defense counsel offered no indication that the expert had information about the case that would not be otherwise obvious to the jury.

Refusal to appoint an expert in this case also cannot be said to have prevented defendant from proceeding safely to trial. MCL 775.15; MSA 28.1252. Defendant was not deprived of his right to cross-examine any of the identification witnesses. Defense counsel could and did challenge one witness, for example, concerning a preliminary examination that defendant contends may have shed some doubt on her identification. In addition, defense counsel had a similar opportunity to challenge the identifications of the other witnesses called by the prosecution.

Even if such expert testimony might have been helpful to defendant, he has not met the burden required to reverse the trial court's decision. A trial court abuses its discretion when its decision is so violative of fact and logic that it evidences a perversity of will, defiance of judgment and exercise of passion or bias. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996). “[A]n abuse of discretion also exists when an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling.” *Id.*

We find no showing that the trial court abused its discretion when it denied defendant's motion for appointment of an expert witness. The trial court made a reasonable decision based on the evidence before it. Defense counsel was also given adequate opportunity to challenge any inconsistencies in the eyewitness identifications before the jury. We therefore do not find error requiring reversal.

Affirmed.

/s/ Gary R. McDonald

/s/ Janet T. Neff

/s/ Michael R. Smolenski

<sup>1</sup> Defendant asserts that the trial court's refusal to appoint an expert in the area of eyewitness identification and categorical perception deprived him of an opportunity to challenge the weaknesses in the prosecution's case against him and denied defendant his constitutional right to defend himself contrary to the federal and Michigan constitutions. US Const, Ams VI and XIV; Const 1963, art 1, § 20. However, defendant fails to demonstrate the constitutional underpinnings of his claim beyond the bald assertion of unconstitutionality. “A party may not merely announce a position and leave it to the Court of Appeals to discover and rationalize the basis for the claim.” *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 178; 568 NW2d 365 (1997). Therefore, rather than address this claim as one of constitutional dimension, we will consider it as a purely procedural question.

<sup>2</sup> While the trial court never ruled as to the admissibility of defendant's expert's testimony, we note that this Court has upheld a trial court's exclusion of expert testimony regarding perception, memory of events and pretrial identification processes. See *People v Hill*, 84 Mich App 90, 95-96; 269 NW2d 492 (1978).