STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY JONES,

Defendant-Appellant.

UNPUBLISHED
May 30, 1997

No. 195942
Oakland Circuit Court
LC No. 95-141520-FC

Before: Bandstra, P.J., and Griffin and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529; MSA 28.797, and pleaded guilty of being an habitual offender, fourth offense, MCL 769.12; MSA 28.1084. He was sentenced to three to twenty years' imprisonment. He appeals as of right. We affirm.

Defendant first argues that the trial court reversibly erred in failing to suppress testimony concerning the complainant's pretrial lineup identification of defendant. Defendant did not object at trial to admission of the identification evidence, and there is no indication that the trial court was aware that defendant was not represented by counsel at the lineup. Given the evidence against defendant, the admission of the testimony does not warrant reversal. *People v Winans*, 187 Mich App 294, 299; 466 NW2d 731 (1991).

Defendant next argues that the trial court erred in overruling his objection to the jury array. Because defendant did not object until after the jury was impaneled and sworn, the issue is not preserved for appellate review. *People v Dixon*, 217 Mich App 400, 404; 552 NW2d 663 (1996).

Defendant also contends that the trial court erred in admitting evidence of a search of his clothing and the items seized in that search. We disagree. Police received a description of a robbery suspect who was a black male, about six feet eight inches tall, wearing a dark T-shirt with a cartoon character on the front, carrying a pipe. When they went to the area where the robbery took place, they found defendant, who matched the description of the robber except with regard to his height and was carrying a metal rod. Based on the totality of the circumstances, the police had a reasonable suspicion that defendant had been involved in criminal activity, and therefore were justified in conducting a limited search of defendant's outer clothing for the purposes of discovering a weapon. *People v Champion*,

452 Mich 92, 97; 549 NW2d 849 (1996); *People v Taylor*, 214 Mich App 167, 169; 542 NW2d 322 (1995).

Defendant argues that, even if the search was justified under *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968), the seizure of a note was beyond the scope of a *Terry* search. The scope of a *Terry* search is strictly limited to that reasonably designed to discover guns, knives, clubs, or other hidden instruments that could be used to assault an officer. *Champion*, *supra* at 99. The scope must be reasonably related to the circumstances that justified the search. *Id.* at 98. Here, defendant was a suspect in a violent crime, and was carrying a metal rod. Pontiac Police Officer Steven Witkowski conducted a pat-down of defendant's clothing and felt an object in his pocket that Witkowski believed might have been a folding knife. He reached into defendant's pocket and pulled out a lighter, some money, and some papers. All of these actions were all within the permissible scope of a *Terry* search.

However, defendant argues that *Terry* did not justify reading the note. We disagree. In the present case, the police had probable cause to arrest defendant based on the fact that he matched the description of the robbery suspect and was apprehended within a short time after the robbery in the area in which the crime took place. Had they arrested defendant, they would have been permitted to conduct an inventory search at the police station, and the note inevitably would have been discovered by lawful means. *People v Thomas*, 191 Mich App 576, 581; 478 NW2d 712 (1991). Therefore, the trial court's admission of the evidence was not clearly erroneous.

Next, defendant argues that the trial court's instruction to the jury regarding the second element of the offense of armed robbery was erroneous. Defendant did not object at trial. Because we find that no manifest injustice will result, we decline to review this issue. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993).

Defendant next maintains that the evidence was insufficient to convict him of armed robbery because there was no evidence of a dangerous weapon introduced at trial. We disagree.

Defendant argues that, because the complainant testified that the robber held the iron rod at his side and did not raise it or use it in a manner suggesting that he would strike the victim, it was not employed in a dangerous manner and, therefore, it was not a dangerous weapon. We disagree. The jury heard testimony that defendant was carrying an iron rod, and showed the complainant a threatening note. The complainant also testified that defendant held the rod in front of his body and that "there were a couple times he kind of made almost like an eye reference to the bar to make sure I knew it was there." Defendant himself testified that he carried the rod to protect him against dogs, which implies that he himself considered it to be a dangerous weapon. Taken in a light most favorable to the prosecution, a reasonable trier of fact could have found that defendant was armed with a dangerous weapon, or an article used or fashioned in a manner to induce the reasonable belief that the article is a dangerous weapon. *People v Parker*, 417 Mich 556, 565; 339 NW2d 455 (1983); *People v McCrady*, 213 Mich App 474, 484; 540 NW2d 718 (1995). Therefore, the evidence was sufficient to support defendant's armed robbery conviction.

Affirmed.

/s/ Richard A. Bandstra
/s/ Richard Allen Griffin
/s/ E. Thomas Fitzgerald