

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REGINALD C. TURNER,

Defendant-Appellant.

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UNPUBLISHED

June 1, 1999

No. 205405

Wayne Circuit Court

LC No. 96-503614

Before: Collins, P.J., and Jansen and White, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of unarmed robbery, MCL 750.530; MSA 28.798, and sentenced to 2 ~~1~~<sup>1</sup>/<sub>2</sub> to 15 years' imprisonment as a second habitual offender, MCL 769.10; MSA 28.1082. Defendant appeals as of right and we affirm.

Defendant first argues that there was insufficient evidence to support his conviction for unarmed robbery. More specifically, defendant contends that the complainant's identification testimony was incredible, and, given the alibi defense presented, the proofs were not sufficient to support a finding beyond a reasonable doubt regarding the issue of identity.

Defendant contends that the complainant's identification of him as the robber was inherently flawed and the trial court should have found her testimony to be incredible given the testimony of the alibi witness. In *People v Kurylczyk*, 443 Mich 289, 306; 505 NW2d 528 (1993), the Supreme Court set forth the following factors to determine whether, under the totality of the circumstances, there is a likelihood of misidentification:

[T]he opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation.

In the present case, the complainant testified that she had a clear view of her attacker before and during the robbery. The parking lot was fairly lit and her assailant stopped twice to talk to her

before robbing her. The complainant gave a very detailed and accurate description of her assailant to the police, both the night she was robbed and the next morning before she identified defendant's picture in the mug book. Additionally, the complainant's initial identification of defendant occurred within twelve hours of the robbery while the details were still fresh in her mind. Moreover, each time the complainant identified defendant as her attacker, she showed no signs of uncertainty, stating unequivocally that defendant was the man who robbed her.

Defendant's claim of mistaken identity hinges on a question of the credibility of the witnesses. In order to believe the alibi witness' testimony, one would necessarily have to find the complainant's identification of defendant to be incredible. In this case, the trial court, sitting as the fact finder, found the complainant's testimony and identification of defendant to be credible. The trial court was not persuaded by the alibi witness' testimony "because she described merely routine daily activities, and not a significant event which would cause someone to remember a particular event." Questions of credibility are left to the trier of fact, and will not be resolved anew by a reviewing court. *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991).

Examining the evidence in a light most favorable to the prosecution, there was sufficient evidence from which the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992).

Defendant next argues that this case was decided against the great weight of the evidence, again basing the argument on the identification testimony described above. However, defendant failed to preserve this issue by bringing a timely motion for new trial before the trial court. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). Moreover, conflicting testimony or a question concerning credibility of a witness is generally not sufficient grounds for granting a new trial. *People v Lemmon*, 456 Mich 625, 643; 576 NW2d 129 (1998). Accordingly, the trial court's credibility determinations are not grounds for reversal in this case and we will not disturb the trial court's findings.

Affirmed.

/s/ Jeffrey G. Collins  
/s/ Kathleen Jansen  
/s/ Helene N. White