

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NORMAN DALE BROWN, JR.,

Defendant-Appellant.

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UNPUBLISHED  
October 26, 1999

No. 207679  
Recorder's Court  
LC No. 97-501939

Before: O'Connell, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from his bench-trial conviction of assault with intent to rob while armed, MCL 750.89; MSA 28.284. Defendant was sentenced to a term of imprisonment of eighteen months to five years. We affirm.

Defendant's sole argument on appeal is that the prosecutor failed to present evidence sufficient to sustain his conviction. In reviewing a claim of insufficient evidence, we view the evidence presented at trial in the light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

Defendant does not contend that the prosecutor failed to present sufficient evidence that an assault with intent to rob while armed took place; rather, defendant argues that the victim's testimony was not credible enough to sufficiently identify defendant as one of the perpetrators.<sup>1</sup> However, the victim testified that, although the perpetrators wore masks, he recognized defendant's eyes and voice. Additionally, in response to the victim's question—"Norman Brown are you trying to rob me?"—one of the perpetrators stated "Oh, shit." Defendant's challenge to the sufficiency of this identification evidence is essentially a challenge to the victim's credibility. In a bench trial, the credibility of identification testimony is a matter for the trial court, as trier of fact, to decide. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). We may not interfere with the role of the trier of fact to determine credibility issues. *Id.*; *Wolfe, supra* at 514-515.

Voice is a competent means of identification, if the witness is reasonably certain of the identification and has a basis for recognizing the person's voice, such as familiarity by way of sufficient previous knowledge. *People v Hayes*, 126 Mich App 721, 725; 337 NW2d 905 (1983). Here, the victim testified that he had worked with defendant. The victim was familiar with defendant's voice, and was certain of his identification of defendant as one of the perpetrators. The credibility of the victim's testimony was a matter solely for the trial court to determine. Viewed in the light most favorable to the prosecutor, the evidence was sufficient to enable a reasonable trier of fact to conclude beyond a reasonable doubt that defendant was one of the perpetrators.<sup>2</sup>

Affirmed.

/s/ Peter D. O'Connell

/s/ Michael J. Talbot

/s/ Brian K. Zahra

<sup>1</sup> However, we do note that the evidence was sufficient to establish all the elements of the charged crime. The victim testified that two men entered the store, that what he believed to be a gun was placed against his back, and that one of the men demanded money. This satisfies the elements of an assault with intent to rob while armed. See *People v Cotton*, 191 Mich App 377, 391; 478 NW2d 681 (1991); MCL 750.89; MSA 28.284.

<sup>2</sup> We note that additional circumstances support defendant's conviction. Defendant matched the general description of one of the perpetrators given by a separate witness. Defendant also owned a vehicle of the type seen near the scene of the crime and was evasive when the police asked him the whereabouts of the vehicle. Additionally, the defendant had previously worked at the store where the offense occurred. The cash register during the time that defendant worked at the store was malfunctioning and could be opened without a key by tapping it, and the perpetrators attempted to open the register by tapping it. We also note in passing that the victim recognized defendant by his eyes and voice, and the trial court, in making factual findings, indicated that defendant had very distinctive eyes that would be easily recognizable. Viewed in the light most favorable to the prosecutor, the evidence in this case was clearly sufficient to support defendant's bench-trial conviction beyond a reasonable doubt.