

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN CLINTON THOMAS,

Defendant-Appellant.

UNPUBLISHED

November 23, 1999

No. 208779

Wayne Circuit Court

LC No. 97-501807

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DESHAWN M. COATES,

Defendant-Appellant.

No. 208782

Wayne Circuit Court

LC No. 97-501807

Before: Talbot, P.J., and Neff and Saad, JJ.

PER CURIAM.

Following a joint bench trial, defendants were convicted of armed robbery, MCL 750.529; MSA 28.797. Defendant Thomas was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to two to four years' imprisonment and defendant Coates was sentenced as a third habitual offender, MCL 769.11; MSA 28.1083, to three to eight years' imprisonment. Defendants appeal as of right and the appeals were consolidated. We affirm.

On appeal defendant Thomas argues that the trial court erred in denying his motion for a directed verdict. Thomas contends that the taking of money and the alleged use of the knife to assault the victim were separate transactions and that the knife was not used to effect the taking so as to constitute an armed robbery. We disagree. In reviewing a trial court's ruling on a directed verdict, we

view the evidence presented by the prosecutor up to the time the motion was made in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime charged were proven beyond a reasonable doubt. *People v Warren*, 228 Mich App 336, 345-346; 578 NW2d 692 (1998).

“The elements of armed robbery are: (1) an assault; (2) a felonious taking of property from the victim’s presence or person; (3) while the defendant is armed with a weapon described in the statute.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Turner*, 213 Mich App 558, 569; 540 NW2d 728 (1995). Robbery is a continuous offense that is not complete until the perpetrator reaches a temporary place of safety. *People v Newcomb*, 190 Mich App 424, 430-431; 476 NW2d 749 (1991). Under this transactional approach, a taking is not considered complete until the assailant has accomplished his escape, because the victim is still considered to be in possession of his property. *Id.* at 431. This Court has therefore sustained armed robbery convictions where the weapon was used to assault the victim after the actual taking had occurred but before the perpetrators’ escape. See *Id.* at 430-431; *People v Tinsley*, 176 Mich App 119, 121-122; 439 NW2d 313 (1989); *People v Beebe*, 70 Mich App 154, 158-160; 245 NW2d 547 (1976).

In the present case, the victim testified that: instead of driving him home as he insisted, Thomas drove to the rear of an apartment complex and demanded money from him; when the victim refused, Thomas climbed in the back seat and began to fight with him; while Thomas held the victim in a headlock, defendant Coates took money from the victim’s pocket; when the victim exited the car, Thomas tried to force him back into the car; Coates displayed a eight to nine inch knife and told the victim that he would stab him unless he complied; as the victim continued to struggle with Thomas, Coates stabbed the victim in the back with a knife and both defendants drove away, leaving complainant wounded in the parking lot. Viewing this evidence in a light most favorable to the prosecution, we conclude that a rational trier of fact could find beyond a reasonable doubt that Thomas committed armed robbery. In our view, the taking and the subsequent assault with the knife constituted a continuous transaction that did not end until defendants left the crime scene. See *Newcomb*, *supra* at 431. Therefore, the trial court did not err in denying Thomas’ motion for a directed verdict.

Thomas also contends that the verdict was against the great weight of the evidence because the victim gave incredible testimony at trial. We disagree. A verdict is against the great weight of the evidence only where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would result if a new trial were not granted. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998).

After a thorough review, we hold that Thomas’ conviction does not contravene the great weight of the evidence. As stated above, we find that there was sufficient evidence to establish that Thomas committed armed robbery. Although the victim’s testimony was hindered by certain inconsistencies, credibility determinations are within the exclusive province of the trier of fact and will not be resolved anew by this Court. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). We therefore defer to the conclusion of the trial judge who was present in the courtroom to observe the witnesses and was in the best position to evaluate credibility. See *People v Carigon*, 128 Mich App 802, 810; 341 NW2d 803 (1983).

Finally, defendant Coates contends that there was insufficient evidence to support his conviction. We disagree. In reviewing the sufficiency of the evidence in a bench trial, we view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). We conclude that evidence that Coates took money from the victim's pocket while Thomas held him in a headlock, that he threatened to stab the victim if he did not get back inside the car, and that he stabbed the victim in the back with a knife, was sufficient to establish that Coates committed armed robbery against the victim beyond a reasonable doubt. See *Carines, supra* at 757 (delineating the elements of armed robbery).

We further reject Coates' specific arguments regarding the sufficiency of the evidence. Coates first argues that no armed robbery occurred because the alleged taking and assault with the knife were two isolated transactions and the knife was not used to accomplish the taking. However, we reject this argument based on our previous analysis addressing the identical issue raised by Thomas. See *Newcomb, supra* at 430-431; *Tinsley, supra* at 121-122; *Beebe, supra* at 158-160.

Coates next asserts that he did not possess the specific intent to commit armed robbery because he was intoxicated at the time of the offense. We disagree. While the defense of intoxication will negate the specific intent element of armed robbery if the degree of intoxication is so great as to render the accused incapable of entertaining that intent, *King, supra* at 428, Coates testified at trial that he was not intoxicated at the time of the offense. Consequently, Coates' argument lacks merit.

Lastly, Coates maintains that he could not be convicted of armed robbery because Thomas reasonably believed that the victim owed him the money for gas. We disagree. Even assuming that Coates could use Thomas' alleged good-faith belief as a defense, the evidence conflicted on the issue whether Thomas had a claim of right to the money. While Thomas testified that the victim had promised to buy gas for his car, the victim testified that no discussion ever took place regarding the payment of gas money. The trial court evidenced its awareness of Thomas' claim of right argument, but chose to resolve the credibility issue in the prosecutor's favor. We will not disturb a trial court's credibility findings where, as here, it appears from the record that the court was aware of the issues and correctly applied the law. *People v Reeves*, 222 Mich App 32, 35; 564 NW2d 476 (1997), rev'd on other grounds, 458 Mich 236 (1998).

Affirmed.

/s/ Michael J. Talbot

/s/ Janet T. Neff

/s/ Henry William Saad