

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEROME ANDREW PARKER,

Defendant-Appellant.

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UNPUBLISHED

March 31, 2000

No. 210701

Recorder's Court

LC No. 97-004490

Before: O'Connell, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of two counts of assault with intent to rob while armed, MCL 750.89; MSA 28.284, two counts of assault with intent to murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to fifteen to thirty years for each of the assault with intent to rob while armed convictions, twelve years and four months to thirty years for each of the assault with intent to murder convictions, and two years for the felony-firearm conviction. Defendant appeals as of right and we affirm.

On May 31, 1997, at approximately 2:00 a.m., a freelance photographer and another man were shot in front of a nightclub in the city of Detroit. Various witnesses described the shooter as a black male dressed in dark clothing. A police officer, who was near the scene of the shooting, saw defendant running from the direction of the nightclub. The police officer noticed that defendant was holding a gun, which defendant threw in front of a church. The police officer pursued defendant and was ultimately able to apprehend and arrest him. Defendant was dressed in dark clothing.

Defendant first argues that there was insufficient evidence to support the trial court's finding that defendant had the requisite intent to rob one of the victims because no one testified that defendant attempted to take money from the victim. In reviewing the sufficiency of the evidence following a bench trial, this Court must view the evidence in a light most favorable to the prosecutor to determine whether the trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-269; 380 NW2d 11 (1985).

We conclude that sufficient evidence was presented to support the trial court's finding that defendant's intent to rob the victim was proven beyond a reasonable doubt. At trial, the victim testified that he had money in his hand at some point before the shooting. Two other witnesses testified that the victim was attempting to pay the photographer before the victim was shot. The fact that no one explicitly stated that defendant was attempting to take money from the victim does not mean that the trial court's finding of intent was not supported by the evidence. Circumstantial evidence can be used in arriving at the "conclusion that defendant possessed the requisite intent." *People v Perez-DeLeon*, 224 Mich App 43, 59; 568 NW2d 324 (1997). Viewing the evidence in the light most favorable to the prosecution, we conclude that the trial court's conclusion, that defendant intended to rob the victim, was supported by sufficient evidence.

Defendant's second argument is that his conviction for assault with intent to rob while armed is against the great weight of the evidence. Defendant specifically challenges the trial court's finding that defendant intended to rob the victim.

The test for determining whether a verdict is against the great weight of the evidence is whether the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand. *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998). The fact that no one explicitly stated that defendant was attempting to take money from one of the victims does not mean that the trial court's finding of intent was against the great weight of the evidence. As discussed above, the trial court found that defendant had the intent to rob based on an evaluation of the evidence presented. Given the testimony that the victim had money in his hand and was attempting to give the money to the other victim when the shooting occurred, we conclude that the evidence supports the trial court's finding of intent. Therefore, the evidence does not preponderate heavily against the verdict.

Defendant's final argument is that he was denied due process of law when the police failed to preserve the bullet taken from the body of one of the shooting victims. Defendant claims that the only evidence that definitively linked the gun found by police with the gun used in the shooting was the bullet that was removed from the photographer's body.

The fact that defendant's convictions were based on circumstantial evidence does not undermine the verdict. Circumstantial evidence does not give rise to adverse conclusions. *People v Cutchall*, 200 Mich App 396, 401; 504 NW2d 666 (1993). "Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of the offense." *People v Greenwood*, 209 Mich App 470, 472; 531 NW2d 771 (1995).

While it is true that the physical descriptions provided by eyewitnesses varied, this fact alone is not enough to establish that defendant was denied due process. Several eyewitnesses described the shooter as a black male dressed in black or dark clothing. A police officer testified that defendant, who was seen running from the scene of the shooting and threw a gun while he was running, was dressed in dark clothing. After pursuing defendant on foot, the officer apprehended defendant and placed him under arrest. Additionally, two eyewitnesses identified defendant in a lineup. Given the similarity in clothing descriptions, the testimony concerning defendant's possession of a gun, and the lineup

identification, it was reasonable for the trial court to infer that the man identified by eyewitnesses was defendant, even though the physical descriptions varied. We conclude that the circumstantial evidence was sufficient to establish that defendant was the shooter.

Defendant also contends that the failure to retrieve and preserve the bullet was motivated by bad faith. “Failure to preserve evidentiary material that may have exonerated the defendant will not constitute a denial of due process unless bad faith on the part of the police is shown.” *People v Hunter*, 201 Mich App 671, 677; 506 NW2d 611 (1993). Defendant’s claim of bad faith is nothing more than sweeping allegations and speculation. Defendant concedes that there is no direct evidence of improper motivation, but claims that the circumstances clearly suggest bad faith on the part of the police. Defendant has put forth no evidence that would support his claim of bad faith. Because defendant has failed to establish bad faith, he has failed to prove that he was denied due process.

Affirmed.

/s/ Peter D. O’Connell

/s/ William B. Murphy

/s/ Kathleen Jansen