

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY FRANKLIN,

Defendant-Appellant.

UNPUBLISHED

December 12, 2000

No. 212866

Wayne Circuit Court

Criminal Division

LC No. 98-000913

Before: Wilder, P.J., and Holbrook, Jr., and McDonald, JJ.

PER CURIAM.

Defendant was convicted by a jury of two counts of armed robbery, MCL 750.529; MSA 28.797, carjacking, MCL 750.529a; MSA 28.797(a), and possession of a firearm during the commission of a felony (hereinafter felony-firearm), MCL 750.227b; MSA 28.424(2). He was sentenced to concurrent prison terms of three to ten years each for the armed robbery and carjacking convictions, and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant does not dispute that the crimes for which he was charged were committed. Rather, he argues that he was mistakenly identified as the perpetrator. His first argument on appeal is that the prosecutor failed to present sufficient evidence to support the jury's conclusion that he was the guilty party. We disagree. When reviewing the sufficiency of evidence in a criminal case, we view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that each element of the crime was proved beyond a reasonable doubt. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

Although early in the investigation both complaining witnesses equivocated to varying degrees about defendant's identity as their assailant, both expressed certainty in the matter at trial. Further, through the course of direct and cross-examination, the witnesses explained both their earlier equivocations and their eventual firm conclusions. The testimony of these witnesses was sufficient to create for jury resolution the question of defendant's identity as the offender. See *People v Abernathy*, 39 Mich App 5, 7; 197 NW2d 106 (1972) (even where the witnesses' identification of the defendant is less than positive, the question remains one for the jury).

Defendant next argues that the trial court abused its discretion in denying his motion for a mistrial. We disagree. The motion for mistrial was premised on the prosecutor's alleged misconduct in improperly injecting a reference to defendant's having been arrested for a different crime. However, the record indicates that defense counsel himself questioned the witness in reference to defendant's arrest for the instant crimes. The prosecutor, in turn, referred to defense counsel's question concerning defendant's arrest, which could hardly have suggested anything to the jury other than defendant's arrest as a suspect in the crimes presently before the court. Thus, the prosecutor did not *inject* any mention of defendant's arrest, but instead followed up on defense counsel's mention of it, and the referenced arrest was the one that brought defendant to court for the instant case, not some other matter.

"A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant, and impairs his ability to get a fair trial." *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995) (citation omitted). In this case, there was no irregularity, let alone one that impaired defendant's ability to receive a fair trial. Accordingly, we conclude that the trial court did not abuse its discretion in denying the request for a mistrial. *People v Laws*, 218 Mich App 447, 456; 554 NW2d 586 (1996).

Finally, defendant argues that the prosecutor improperly and fatally presented a civic-duty argument to the jury during closing statements. We disagree. As an initial matter, we note that, when the prosecutor spoke of the victims' statuses as mother and grandmother, the trial court sustained defense counsel's specific and timely objection. We further note that, as the prosecutor continued, the argument took the form of admonishing the jury to expect that victims situated as were the two in this case would remember well the face of their assailant, not that sympathy for a mother and grandmother should compel a conviction. In sum, the trial court properly steered the prosecutor away from any improper civic-duty argument, and none infected these proceedings.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Donald E. Holbrook, Jr.
/s/ Gary R. McDonald