

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBBIE L. LEE,

Defendant-Appellant.

UNPUBLISHED

January 26, 2001

No. 217953

Wayne Circuit Court

LC No. 98-013462

Before: Sawyer, P.J., and Jansen and Gage, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of armed robbery. MCL 750.529; MSA 28.797. He was thereafter sentenced to three to fifteen years' imprisonment. Defendant appeals as of right and we affirm.

This case involves the robbery of a drug store cashier. The complainant testified that he saw defendant lift his coat and reveal the handle and part of the barrel of a gun that the complainant identified as a nine-millimeter, silver Glock handgun. He testified that he could identify the gun because his grandfather owned one. Defendant then asked for and took money from the cash register. On cross-examination, the complainant was impeached with his testimony during the preliminary examination that the gun's handle was black. At trial, the complainant also denied that he only saw the "full handle" of the gun, as he apparently testified to during his preliminary examination, and not "a little bit of the barrel." On cross-examination, the complainant testified that he had difficulty seeing things at a distance and wore glasses, but was not wearing glasses or contact lenses on the night of the robbery.

In his police statement, defendant stated that he took the money from the drug store, however he made no mention of the use of a gun. He merely stated that he asked for and received the money. Defendant also made a written statement to this effect. At trial, however, defendant testified that he surreptitiously took the money by distracting the cashier.

On appeal, defendant first contends that the trial court shifted the burden of proof to defendant in its findings of fact and conclusions of law, which in the entirety, read:

In regard to the felony firearm, the People can't prove that beyond a reasonable doubt. I don't know if there was really a gun. I'm not sure.

The one thing I do know is that there's no way this young man, who's trying to make a living working in a Walgreens, agreed to let somebody empty his cash register. No way, and that's what's in the defendant's statement.

He testified under oath, "Well, I really didn't do that. I tricked him into looking away so I could just, by slight [sic] of hand, take the money." And that didn't happen either. Because why does he stand at the door worrying about whether security is going to come.

This was an armed robbery. He used something that made this young man fear for his life to the extent that he allowed him to take the money. It's an armed robbery, and so I find.

The trial court never stated that defendant failed to prove his theory, but rather found that the evidence presented did not support the defense theory. We conclude that the trial court, sitting as the trier of fact, did not shift the burden of proof to defendant. See *People v Smith*, 148 Mich App 16, 25-26; 384 NW2d 68 (1985).

Next, defendant argues that the trial court's finding that a weapon was used in the robbery was clearly erroneous. Findings of fact are considered clearly erroneous if, after review of the entire record, this Court is left with a definite and firm conviction that a mistake has been made. *People v Thenghkam*, 240 Mich App 29, 43-47; 610 NW2d 571 (2000). As discussed above, defendant gave contradictory versions of how he acquired the money from the cash register. The trial court instead believed the complainant, who testified that he saw a gun.

Under the clearly erroneous standard of review, this Court must give regard to the "special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). The trial court had a superior ability to view the evidence and the witnesses, *People v Peerenboom*, 224 Mich App 195, 198; 568 NW2d 153 (1997), and we conclude that it did not clearly err in finding the complainant's testimony credible. See *Thenghkam, supra* at 47. Thus, in light of the issues raised, the trial court's findings of fact and conclusions of law were sufficient. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995).

Affirmed.

/s/ David H. Sawyer
/s/ Kathleen Jansen
/s/ Hilda R. Gage