

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRONTY L. RAGLAND,

Defendant-Appellant.

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UNPUBLISHED

June 25, 2002

No. 229707

Wayne Circuit Court

LC No. 99-012521

Before: Zahra, P.J., and Cavanagh and White, JJ.

PER CURIAM.

Defendant was convicted by a jury of home invasion, MCL 750.110a, armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to consecutive terms of two to twenty years for home invasion, seven to thirty-five years for armed robbery, and two years for felony-firearm. He appeals as of right, and we affirm.

Complainant Brandon Fee testified that he was outside his home at about 12:30 a.m. on November 8, 1999, when defendant and codefendant Anthony Stephenson robbed him of his wallet at gunpoint. Defendant then told Fee “you’re going to take us into your house and give us all your money.” Fee testified that defendant held a gun pointed at his face and then handed the gun to codefendant Stephenson as they forced their way into the house. Fee’s wife and three-year-old daughter were sitting on the couch. Inside the house, defendant remained by the door while codefendant Stephenson held the gun, repeated the demand for money, and threatened to kill complainant until complainant’s wife gave the men \$350.

Neither Fee nor his wife were able to identify anyone from two photo arrays, which included multiple pictures of defendant, but Fee positively identified defendant at a live line-up. Fee’s wife was unable to identify defendant, but identified codefendant. At trial, Fee positively identified both defendant and codefendant and said there was no doubt in his mind regarding the identification. Fee testified that he identified defendant from the line-up “without a doubt” and that he was “more than 100% positive” that defendant was one of the robbers. Defendant’s girlfriend testified that defendant was with her at the time of the robbery.

Defendant first argues that counsel's failure to challenge the identification procedures denied him the effective assistance of counsel. Because defendant did not request a *Ginther*<sup>1</sup> hearing, this Court's review is limited to mistakes apparent on the record. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997).

To establish ineffective assistance of counsel, defendant must show that counsel made errors so serious that he was not functioning as the counsel guaranteed by the Sixth Amendment, and that counsel's deficient performance prejudiced the defense so as to deprive defendant of a fair trial. *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997). There is a strong presumption that counsel's conduct was reasonable. *Id.* This Court will not substitute its judgment for that of trial counsel on matters of trial strategy. *People v Avant*, 235 Mich App 499, 508; 597 NW2d 864 (1999). Further, this Court will not assess counsel's competence with the benefit of hindsight. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999).

Here, defendant argues that counsel should have moved to suppress evidence of the pre-trial identification procedures as unduly suggestive, should have challenged the in-court identification as tainted, and should have requested cautionary jury instructions. The record indicates that the attorney who represented defendant before trial sought to exclude any in-court identification at the preliminary examination, but the motion was denied. While trial counsel could have renewed the objection, we find no ineffective assistance. Neither Fee nor his wife were able to identify defendant from two photo arrays, and Fee's wife failed to identify defendant at the lineup. Defendant has not overcome the presumption that counsel's decision not to challenge this evidence was a matter of trial strategy. Further, although Fee identified defendant at the lineup, it is not apparent from the record that the lineup was unduly suggestive, as defendant claims, or that the lineup identification was a product of the photo array. Differences in height, skin color and facial hair do not necessarily render a lineup suggestive. *People v Holmes*, 132 Mich App 730, 745-746; 349 NW2d 230 (1984). Nor does it appear that the in-court identification would have been excluded as tainted had counsel made the challenge, given Fee's opportunity to observe defendant during the offense. Lastly, trial counsel used the identification procedures in this case to argue that cross-racial identification is "tough" and to suggest that Fee and his wife had "they all look the same" attitudes. Regarding the instruction, trial counsel did attempt to argue that identifications are to be "viewed with great skepticism" and counsel's request for a special instruction to that effect was rejected by the trial court. Defendant has not overcome the presumption that counsel's actions were reasonable or shown that any alleged defects detrimentally affected the result of the trial. *People v Fike*, 228 Mich App 178, 181; 577 NW2d 903 (1998).

Defendant also argues that the evidence was insufficient to support his convictions. This Court reviews a sufficiency claim de novo by viewing the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979); *People v Oliver*, 242 Mich App 92, 94-95; 617 NW2d 721 (2000). The standard of review is deferential and this Court is required to draw all reasonable

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<sup>1</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

inferences and make credibility choices in support of the verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

There was evidence that defendant and codefendant, armed with a gun, took Fee's wallet, and then entered his home without permission, intending to steal more money while Fee's wife and child were lawfully present in the home. Viewed most favorably to the prosecution, the evidence was sufficient to enable a rational trier of fact to find that the essential elements of the crimes of armed robbery, home invasion and felony-firearm were proven beyond a reasonable doubt. MCL 750.529; MCL 750.110a; *Hampton, supra*. Further, the jury's finding that defendant was not guilty of a second count of armed robbery involving Fee's wife does not undermine its verdict of guilty on the home invasion charge. The evidence supported a finding that defendant entered the house without permission, while others were lawfully present, with intent to commit a larceny, although he did not participate in assaulting Fee's wife. Defendant challenges the remaining convictions based on an unreliable identification. However, defendant has failed to establish that the identification was inadmissible, and the question of its accuracy was properly left to the jury.

Lastly, defendant argues that his sentences are disproportionate. Because the crimes in this case were committed on November 8, 1999, the statutory guidelines apply. MCL 769.34(1). A sentence within the statutory guidelines range must be affirmed on appeal unless there was an error in scoring or inaccurate information was relied on in determining the defendant's sentence. MCL 769.34(10); *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000). Here, each of defendant's sentences are within the recommended guidelines' range and defendant does not contend that the court relied on inaccurate information. Accordingly, we affirm defendant's sentences.

Affirmed.

/s/ Brian K. Zahra  
/s/ Mark J. Cavanagh  
/s/ Helene N. White