

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CORNELL E. SQUIRES,

Defendant-Appellant.

UNPUBLISHED

September 27, 2002

No. 233126

Wayne Circuit Court

LC No. 99-011627

Before: O’Connell, P.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of assault with intent to rob while armed, MCL 750.89. The trial court sentenced defendant to 2 to 10 years’ imprisonment. We affirm.

Defendant first argues that the trial court erred in denying his motion for directed verdict of acquittal. Specifically, defendant claims that the evidence was insufficient to establish that defendant was armed. We review de novo a trial court’s decision on a motion for a directed verdict. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). The evidence is viewed in the light most favorable to the prosecution to determine if it could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt. *People v Mehall*, 454 Mich 1, 6; 557 NW2d 110 (1997); *Aldrich, supra*.

Proof of assault with intent to rob while armed requires three elements: (1) an assault with force and violence; (2) an intent to rob or steal; and (3) the defendant’s being armed. *People v Cotton*, 191 Mich App 377, 391; 478 NW2d 681 (1991). The defendant must be armed with an article that is either in fact a dangerous weapon or an article harmless in itself, but used or fashioned in a manner to induce the reasonable belief that the article is a dangerous weapon. MCL 750.89; see *People v Jolly*, 442 Mich 458, 468; 502 NW2d 177 (1993). “The existence of some object, whether actually seen or obscured by clothing or something such as a paper bag, is objective evidence that a defendant possesses a dangerous weapon or an article used or fashioned to look like one.” *Jolly, supra* at 469. The victim’s subjective belief that the defendant was armed alone is insufficient to prove the defendant was armed; the prosecutor must submit to the trier of fact some objective evidence of the existence of a weapon or article. *People v Taylor*, 245 Mich App 293, 297-298; 628 NW2d 55 (2001). Further, a defendant is not required to verbally threaten the victim with some specific bodily harm in order to obtain a conviction. *Id.* at 302-303.

Here, viewing the evidence in the light most favorable to the prosecutor, a reasonable trier of fact could conclude that defendant was armed. Testimony reveals that the undercover officers saw defendant walking toward them with “definitely . . . something” in his hand. The officers could not see that the object was something harmless. Defendant ordered them out of their car; his words and his manner led them to believe that they were being carjacked. Although defendant did not expressly tell the officers that they were being robbed, his words constituted a demand that they surrender their property. Further evidence indicated that defendant planned to take the undercover officers’ money. Defendant’s conduct of keeping the object he was holding down and close to his side enforced the officers’ belief that he held a weapon. Thus, the facts of this case present more than just the officers’ subjective belief that defendant was armed. The trial court did not err in denying defendant’s motion for directed verdict in this case.

Defendant also asserts that the trial court should have instructed the jury on the crime of attempted unarmed robbery. Where, as here, a particular instruction is not requested and counsel approves the instructions as given, error is waived and there is no review. *People v Carter*, 462 Mich 206, 219; 612 NW2d 144 (2000).

Furthermore, to the extent that defendant argues that the trial court erred in denying his motion for new trial, we disagree, for the same reasons that a directed verdict was properly denied and because defendant cannot now complain about the jury instructions that he approved.

Affirmed.

/s/ Peter D. O’Connell
/s/ Richard Allen Griffin
/s/ Joel P. Hoekstra