

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMNELL DEVON MONTGOMERY,

Defendant-Appellant.

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UNPUBLISHED

April 20, 2004

No. 245087

Wayne Circuit Court

LC No. 02-000565-01

Before: Gage, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529, and sentenced to a term of nine to twenty years' imprisonment. He appeals as of right. We affirm.

I

Defendant first argues that there was insufficient evidence that he was armed with a weapon to support his conviction of armed robbery. We disagree. In determining the sufficiency of the evidence to support a conviction, we view the evidence in the light most favorable to the prosecution to decide whether it would warrant a reasonable juror in finding guilt beyond a reasonable doubt. *People v Gonzalez*, 468 Mich 636, 640; 664 NW2d 159 (2003).

The armed robbery statute applies to an incident in which, in pertinent part, the actor is "armed with a dangerous weapon, or any article used or fashioned in a manner to lead the person so assaulted to reasonably believe it to be a dangerous weapon." MCL 750.529; see also *People v Banks*, 454 Mich 469, 472-473; 563 NW2d 200 (1997). In this case, the complainant testified that, during the incident, defendant "had something upside my head on the right side" and that it "looked like the barrel of a gun." He also said that it "felt like half a barrel." When asked if he saw that weapon, he said at one point that he "saw the barrel of it" and at another point that he saw "part of the barrel." The complainant also said that it looked similar to a revolver. Viewed most favorably to the prosecution, this evidence was sufficient to support a finding that defendant either used an actual dangerous weapon, namely a gun, or used an article in a manner to lead the complainant reasonably to believe that it was a gun. Thus, there was sufficient evidence to support a finding of the pertinent element of armed robbery.

II

Defendant also argues that the trial court abused its discretion, *People v Coy*, 258 Mich App 1, 17; 669 NW2d 831 (2003), in denying his motion for a mistrial after a police officer referred to defendant as having been arrested in connection with an unrelated carjacking charge. We disagree.

Sergeant Terry Antrikin testified that after receiving some information about a reported armed robbery (he apparently was referring to the report underlying this case), he thought that a description of the perpetrator matched defendant, so he took a photograph of defendant to show another witness in this case. In responding to a question regarding how he obtained that photograph, Sergeant Antrikin mentioned that defendant was housed at a police precinct because he was previously arrested for a carjacking. Shortly thereafter, a bench conference was held at defense counsel's request. The prosecutor subsequently elicited from Sergeant Antrikin that he did not participate in any investigation with regard to whether defendant was involved in a carjacking and that to his knowledge no carjacking charge was ever filed. The prosecutor then stipulated that no carjacking charge was filed against defendant.

Not every mention before a jury of an inappropriate subject matter warrants a mistrial. *People v Griffin*, 235 Mich App 27, 36; 597 NW2d 176 (1999). In *Griffin*, this Court held that a "brief incidental mention" of the defendant having been in prison did not require a mistrial. *Id.* at 36-37. Similarly, we conclude that the trial court here did not abuse its discretion in ruling that there was insufficient prejudice to declare a mistrial where there was only a brief mention of defendant's prior arrest and where the testimony also indicated that no charges were pursued against defendant with regard to the unrelated matter. Although the police officer should not have mentioned the carjacking arrest, reversal is not required under the circumstances of this case. See, e.g., *People v Holly*, 129 Mich App 405, 414-416; 341 NW2d 823 (1983).

Affirmed.

/s/ Hilda R. Gage  
/s/ Patrick M. Meter  
/s/ Karen M. Fort Hood