

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMAR SIMSON,

Defendant-Appellant.

UNPUBLISHED

July 10, 2008

No. 271415

Wayne Circuit Court

LC No. 06-001673-01

Before: Owens, P.J., and O’Connell and Davis, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of armed robbery, MCL 750.529, but acquitted of felonious assault, MCL 750.82, and was sentenced to a prison term of 12 to 20 years. He appeals as of right. We affirm.

Defendant first argues that trial counsel was ineffective for failing to provide him with an opportunity to accept a plea offer from the prosecution before trial. We disagree. “Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law.” *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). We review the trial court’s factual findings for clear error, but review de novo the constitutional issue of whether defendant was denied effective assistance of counsel based on those facts. *Id.* at 579, 582.

Pursuant to a remand from this Court, *People v Simson*, unpublished order of the Court of Appeals, entered August 20, 2007 (Docket No. 271415), the trial court held a *Ginther*¹ hearing concerning whether defendant received ineffective assistance of counsel. The sole issue was whether trial counsel communicated a plea offer to defendant. Both defendant and his trial counsel testified. Defendant denied informing counsel that he did not want to accept any plea offers. However, defense counsel testified that he conveyed all plea offers to defendant, but defendant unequivocally declined to accept any offers and maintained that he was innocent. The trial court essentially determined that defense counsel was more credible. Affording deference to the trial court’s assessment of credibility, *People v Sexton (After Remand)*, 461 Mich 746, 752;

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

609 NW2d 822 (2000), the trial court's factual finding that defendant's trial counsel conveyed the plea offers to defendant and that defendant chose to reject the offers because he maintained his innocence is not clearly erroneous.²

Defendant next argues that there was insufficient evidence to support his conviction of armed robbery because the evidence failed to show that he possessed either a weapon or an article that would cause a reasonable person to believe it to be a dangerous weapon. Again, we disagree. When reviewing the sufficiency of the evidence in a criminal case, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

MCL 750.529 was amended in 2004 and now states, in pertinent part:

A person who engages in conduct proscribed under section 530 and who in the course of engaging in that conduct, possesses a dangerous weapon *or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon, or who represents orally or otherwise that he or she is in possession of a dangerous weapon*, is guilty of a felony punishable by imprisonment for life or for any term of years. [Emphasis added.]

A conviction under this version of MCL 750.529 requires a prosecutor to prove “(1) the defendant, in the course of committing a larceny of any money or other property that may be the subject of a larceny, used force or violence against any person who was present or assaulted or put the person in fear, and (2) the defendant, in the course of committing the larceny, either possessed a dangerous weapon, possessed an article used or fashioned in a manner to lead any person present to reasonably believe that the article was a dangerous weapon, or represented orally or otherwise that he or she was in possession of a dangerous weapon.” *People v Chambers*, 277 Mich App 1, 7; 742 NW2d 610 (2007).

The complainant testified that defendant reached in his waistband, came out with “something,” pointed it at the complainant, and said, “Back up, I am going to pop your ass.” The complainant then took cover behind another car. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant possessed an article that he fashioned in a manner that led the complainant to reasonably believe it was a dangerous weapon and that defendant represented orally that he was in possession of a dangerous weapon. Thus, there was sufficient evidence to support defendant's armed robbery conviction.

² Indeed, from the record it appears defendant has maintained inconsistent positions. At sentencing, he told the trial court “I don't commit Armed Robbery” and it appeared that he still believed himself to be innocent of that charge. Yet at the *Ginther* hearing, defendant stated that he would have taken a plea “in a heartbeat” because he knew he was guilty of armed robbery.

Affirmed.

/s/ Donald S. Owens
/s/ Peter D. O'Connell
/s/ Alton T. Davis