

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN DEPUTY,

Defendant-Appellant.

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UNPUBLISHED

October 23, 2008

No. 280258

Ottawa Circuit Court

LC No. 07-031203-FC

Before: Servitto, P.J., and Donofrio and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529, and sentenced to 10 to 30 years' imprisonment. He appeals as of right. We affirm.

Defendant's conviction arises from the robbery of an Admiral Tobacco Station in Holland, Michigan during the morning hours of March 3, 2007. The clerk testified that a person who appeared to be a customer mumbled something to her and then demanded that she open the cash register drawer. The clerk further testified that as she was fumbling with the drawer the person told her to hurry, pulled back his jacket, and pointed a small black object that was in his jacket at her. The clerk testified that she thought the object was a gun and finished opening the drawer, whereby the person reached over the counter with his left hand and took approximately \$88 from the drawer. A surveillance camera recorded the incident and was submitted at trial as evidence.

Defendant was later arrested for the robbery and a black cellular telephone was found in his apartment at the time of the arrest and later admitted as evidence at trial. Defendant admitted to the police and later during testimony that he was responsible for the robbery and that he had the cellular telephone in his possession during the robbery. The arresting officers testified that defendant told them he "used" a cellular telephone during the robbery; however, defendant testified that he never threatened the clerk or represented the telephone to be a weapon. Defendant admitted at trial that he wrote a letter to the judge seeking leniency in which he stated "[c]an you imagine a man so ignorant that he robs a store with a cell phone!"

The only issue on appeal is whether there was sufficient evidence to prove defendant was armed with a dangerous weapon when he robbed the Admiral station. Defendant contends that the clerk's belief that he possessed a dangerous weapon was unreasonable because he made no threats that he had a weapon and did not portray the cellular telephone as a weapon.

We review a sufficiency of the evidence claim de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). All facts are construed in a light most favorable to the prosecution and we must determine whether any rational trier of fact could have concluded that the prosecution proved the essential elements of the crime beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). “Circumstantial evidence and reasonable inferences arising therefrom can sufficiently establish the elements of a crime.” *People v Schultz*, 246 Mich App 695, 702; 635 NW2d 491 (2001).

MCL 750.529 provides that a person is guilty of armed robbery if during the commission of an unarmed robbery that person “possess 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 the possession of a dangerous weapon.” To submit proof that a defendant used an article to induce the victim to reasonably believe it to be a dangerous weapon, or used to feign a weapon, actual possession of an article is required. See *People v Taylor*, 245 Mich App 293, 297; 628 NW2d 55 (2001). To show actual possession there must be some objective evidence that the defendant possessed a weapon or article before a jury is permitted to assess the merits of an armed robbery charge. *People v Jolly*, 442 Mich 458, 468; 502 NW2d 177 (1993). Subjective belief alone is insufficient to submit the question of guilt to the jury. *Id.* In *Jolly*, *supra* at 469, the Michigan Supreme Court stated that “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.” The Court went on to hold that there was sufficient evidence to submit the armed robbery question to the jury when the clerk was orally threatened and testified that he observed a bulge in the assailant’s midsection. *Id.* at 461, 463. Although the clerk never actually saw the gun, the Court held that the bulge in combination with the threat objectively supported the clerk’s belief that the assailant was armed. *Id.* at 470-471.

The factual basis in *Jolly* “constitutes the absolute minimum level of evidence sufficient to support an armed robbery conviction.” *People v Banks*, 454 Mich 469, 475; 563 NW2d 200 (1997). However, a defendant need not verbally threaten the victim with some specific bodily harm in order to obtain a conviction of armed robbery. *Taylor*, *supra* at 302-303. In the instant case, the victim testified that she observed something small and black after defendant pulled back his coat, and the object was pointed at her while defendant demanded she open the cash drawer. She believed the object defendant was holding was a gun. Furthermore, the clerk’s father who spoke with her immediately after the incident testified his daughter indicated the store had been robbed and the robber had used a gun. In addition, defendant admitted that he had the black cellular telephone that was recovered during his arrest with him at the time of the robbery, and the arresting police officers testified the defendant made statements indicating he “used” a cellular telephone during the robbery as opposed to a gun. This testimonial evidence, coupled with the defendant’s letter to the judge suggests the clerk’s beliefs were based on objective facts in existence at the time of the incident. While the strength of this evidence may be questioned, the role of this Court is not to interfere with the factfinder’s role of determining the weight of the evidence or credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992). Reviewing the evidence in the light most favorable to the prosecution, we find that there was sufficient evidence to prove that the defendant was “armed”

during the commission of the robbery according to MCL 750.529.

Affirmed.

/s/ Deborah A. Servitto

/s/ Pat M. Donofrio

/s/ Karen M. Fort Hood