

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS DUANE BANKS,

Defendant-Appellant.

UNPUBLISHED

April 16, 2009

No. 281325

Saginaw Circuit Court

LC No. 07-028980-FC

Before: Bandstra, P.J., and Whitbeck and Shapiro, JJ.

PER CURIAM.

Defendant Dennis Banks appeals as of right from his jury trial conviction of armed robbery.¹ The trial court sentenced Banks as a fourth-offense habitual offender² to serve 15 to 23 years in prison. We affirm.

I. Basic Facts And Procedural History

At the trial in this matter, Brandon McGraw testified that on March 31, 2007, he and Jose Deleon were working as loss prevention officers at the JCPenney store in the Fashion Square Mall. McGraw stated that loss prevention officers work in the store in plainclothes and act as though they are shopping. McGraw said that his attention was drawn to Banks, who was lingering around the cologne department, an area where the products are easily accessible, fairly expensive, and in the open. McGraw testified that he saw Banks pick up and place a bottle of cologne in a bag he was carrying. McGraw called Deleon for backup, and the two of them watched Banks walk past the cash registers and exit the store. McGraw said that he called and informed his supervisor of what was happening and the supervisor decided to review the store cameras. The supervisor testified that he reviewed the video and then called to the security officers that were pursuing Banks to confirm the theft.

McGraw testified that he and Deleon followed Banks into the parking lot and were deciding whether to approach him when McGraw received a call on his radio from the supervisor

¹ MCL 750.529.

² MCL 769.12.

stating that they should apprehend Banks. McGraw indicated that Banks was walking toward a van that had two occupants in it, but as he got closer to the van, the van drove away. McGraw said that Banks turned around, saw him and Deleon, and then started moving faster toward the road. McGraw testified that he approached Banks and told him that he worked as a JCPenney loss prevention officer. McGraw told Banks that he thought he had some items that belonged to the store and asked that Banks come with him. McGraw said that he approached Banks, grabbed him by the shoulder, and Banks said, “Don’t touch me” and swung the bag he was carrying, hitting McGraw in the head. Deleon testified that he then ran to McGraw as fast as he could in order to assist. McGraw testified that based on the way Banks used the bag, he believed that it was a dangerous weapon.

McGraw testified that Banks took off running, with the bag in hand, but McGraw was able to chase him and tackle him. McGraw testified that Deleon tried to handcuff Banks, but he continued to struggle. Eventually, McGraw said, Saginaw Township Police Officer Jay Pansing took Banks into custody. McGraw stated that after the incident, five bottles of cologne were found in the bag, and when JCPenney scanned them, it was confirmed that these bottles of cologne were the property of the store.

Officer Pansing testified that he interviewed McGraw, Deleon, and the supervisor. Officer Pansing wrote in his report that “the suspect turned and tried to strike [McGraw] with the bag,” not that McGraw was actually struck. Officer Pansing stated, however, that he recalled McGraw telling him that he had been hit with the bag in the back of the head. Officer Pansing said that his report was intended to be a very general depiction of what occurred on March 3, 2007, since JCPenney had its own loss prevention department.

II. Sufficiency Of The Evidence

A. Standard Of Review

Banks’ sole issue on appeal is that there was insufficient evidence to uphold his armed robbery conviction. We review sufficiency of the evidence claims de novo,³ viewing all evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.⁴ We resolve conflicts in the evidence in favor of the prosecution.⁵

B. Elements Of The Offense

“The elements of armed robbery are: (1) an assault; (2) a felonious taking of property from the victim’s presence or person; and (3) while the defendant is armed with a weapon.”⁶

³ *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002).

⁴ *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001).

⁵ *Id.*

⁶ *People v Smith*, 478 Mich 292, 319; 733 NW2d 351 (2007).

Banks only challenges the sufficiency of the evidence with respect to the third element. Banks specifically argues that he was neither armed with a dangerous weapon, nor did he use an instrument in a manner to lead any person to reasonably believe the instrument was a dangerous weapon.

C. Legal Standards

The factfinder should determine whether an object is a dangerous weapon based on the circumstances of the case.⁷ Whether an object is a dangerous weapon depends on the nature of the object and how it is used.⁸ Additionally, any item, otherwise harmless in itself, that is used or fashioned in a manner to induce the reasonable belief that it is a dangerous weapon will be considered a dangerous weapon under MCL 750.529.⁹ However, the victim's belief that the defendant was armed must be objective and reasonable; merely a subjective belief is insufficient to support a conviction of armed robbery.¹⁰

D. Applying The Standards

Here, there was evidence that Banks carried a bag containing five bottles of boxed cologne. McGraw and Deleon testified that Banks struck McGraw in the head with the bag containing the cologne. While not designed to be a dangerous weapon, the manner in which Banks used the bag containing the cologne effectively made the bag and its contents a dangerous instrumentality that could cause serious injury, particularly when aimed at McGraw's head. That McGraw did not suffer serious injury as a result of the blow is not dispositive. Further, McGraw testified that, based on the way Banks used the bag, he believed that it was a dangerous weapon. Deferring to the superior ability of the trier of fact to assess the credibility of witnesses and the weight of the evidence,¹¹ a rational trier of fact could find from this evidence that it was reasonable for McGraw to believe that the bag bottles of cologne was a dangerous weapon.

Affirmed.

/s/ Richard A. Bandstra
/s/ William C. Whitbeck
/s/ Douglas B. Shapiro

⁷ *People v Norris*, 236 Mich App 411, 415; 600 NW2d 658 (1999).

⁸ *People v Jolly*, 442 Mich 458, 470; 502 NW2d 177 (1993).

⁹ *People v Banks*, 454 Mich 469, 473; 563 NW2d 200 (1997).

¹⁰ *People v Taylor*, 245 Mich App 293, 297; 628 NW2d 55 (2001).

¹¹ *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992).