

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GERARD DARAN-LOUIS DAVIS,

Defendant-Appellant.

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UNPUBLISHED

June 16, 2009

No. 284626

Washtenaw Circuit Court

LC No. 07-001678-FC

Before: Jansen, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant appeals as of right following his jury-trial convictions of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to two years' imprisonment for the felony-firearm conviction, to be followed by 15 to 30 years' imprisonment for the armed robbery conviction. We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

On September 2, 2007, the Circle K store was robbed by two men wearing homemade ski masks. The clerk working at the time testified that one of the two men was carrying a "big gun." When the victim called 911, he identified the gun as an AK-47. On September 5, 2007, a police officer attempted to stop a maroon-colored Grand Marquis for failure to display a license plate. Instead of pulling over, the driver attempted to elude police and eventually crashed the vehicle into a house. The two occupants of the car fled on foot. Police officers did not catch the men, but they impounded the Grand Marquis. They discovered two ski masks and a 30-30 rifle inside the car, along with defendant's identification. The car was registered in the name of defendant's mother. On September 17, 2007, police received a call regarding two suspicious individuals who appeared to be attempting to break into a vehicle. Officers arrived and chased the two men, one of whom was defendant. As defendant was attempting to elude police, he discarded a ski mask. Defendant eventually confessed to the Circle K robbery. He admitted that he and his accomplice wore ski masks and used his father's 30-30 rifle to commit the robbery. In addition to defendant's taped confession, jurors were able to view surveillance footage of the robbery itself.

Before jury selection, defense counsel objected to the admission into evidence of the 30-30 rifle seized from the Grand Marquis on the ground that the victim had originally described the firearm used in the robbery as an AK-47. Defense counsel contended that admission of the 30-

30 rifle would be greatly prejudicial. The trial court denied the motion, finding that defense counsel's objections went to the weight, not the admissibility, of the evidence.

The decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v Yost*, 278 Mich App 341, 353; 749 NW2d 753 (2008). Evidence of a defendant's possession of a weapon similar to that used in the charged offense is relevant. *People v Hall*, 433 Mich 573, 580-581; 447 NW2d 580 (1989); *People v Howard*, 391 Mich 597, 604-605; 218 NW2d 20 (1974). It is not necessary that a weapon be ballistically tied to the crime in order for it to be admitted into evidence. *People v Prast (On Rehearing)*, 114 Mich App 469, 490-491; 319 NW2d 627 (1982). It is sufficient that the weapon is similar to the one used in the crime and might be the actual weapon. *People v Kramer*, 103 Mich App 747, 758-759; 303 NW2d 880 (1981).

To justify the admission, a proper foundation must be laid, and such articles must be identified as the articles they are purported to be, and shown to be connected with the crime or with the accused; however, such identification is not required to be positive, absolute, certain, or wholly unqualified, and where there is some evidence for this purpose, objections to its sufficiency go to the weight rather than the admissibility of the articles in question. [*People v Burrell*, 21 Mich App 451, 456-457; 175 NW2d 513 (1970) (citation omitted).]

There was sufficient evidence presented at trial to allow for the admission of the 30-30 rifle as evidence. The victim originally identified the gun used in the crime as an AK-47. However, he admitted that he did not know much about guns and that he was so upset during the robbery that he had not paid much attention to the gun's identifying characteristics. The victim could not positively identify the 30-30 rifle as *the* gun used in the robbery, but he certainly testified that the gun was *similar* to the one used. Along with the victim's testimony, the jury was given an opportunity to view the surveillance footage taken during the robbery. Members of the jury could assess for themselves whether the gun that was admitted into evidence was similar to the one on the tape. The 30-30 rifle was seized from a Grand Marquis that was registered to defendant's mother. Defendant's identifying information was also found in the car. In addition to all this evidence, the jury was able to hear defendant's taped admission, in which he admitted to participating in the robbery with another individual. Defendant admitted that they had used homemade ski masks and his father's 30-30 rifle. Defendant essentially argues that the victim's original misidentification should result in excluding the evidence; however, the misidentification would go only to the weight of the evidence, not its admissibility. We perceive no error in this regard.

Affirmed.

/s/ Kathleen Jansen  
/s/ Joel P. Hoekstra  
/s/ Jane E. Markey