

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ERIC WHITE, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

ERIC WHITE,

Respondent-Appellant.

UNPUBLISHED

December 27, 2012

No. 306766

Wayne Circuit Court

Juvenile Division

LC No. 10-493397-DL

Before: RONAYNE KRAUSE, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Respondent, a juvenile, appeals as of right from the trial court's dispositional order adjudicating him guilty of unarmed robbery, MCL 750.530, and placing him on juvenile probation. We affirm.

Respondent's adjudication arises from an allegation that he stole a pair of expensive eyeglasses from Joshua Daniels's face outside a shopping mall. Both Daniels and his girlfriend, Sharionna Buckner, identified respondent as the person who took the glasses. Respondent acknowledged being at the mall and having an altercation with Daniels and Buckner about the glasses, but denied taking them. Respondent presented a defense of misidentification based on the coat that he was wearing, and argued that the identification testimony was not credible.

I. DENIAL OF A DIRECTED VERDICT

Respondent first argues on appeal that the trial court applied an incorrect legal standard when it denied his motion for a directed verdict, because the trial court only considered whether "some" evidence of each element of unarmed robbery had been presented, rather than consider whether there was sufficient evidence to establish respondent's guilt beyond a reasonable doubt.

As respondent correctly notes, in determining a motion for a directed verdict, a trial court must consider the evidence presented by the prosecutor up to the time the motion is made, view the evidence in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. See *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979). Despite the trial

court's incomplete statement of this standard, the record clearly reveals that the trial court properly recognized that it was required to view the evidence in the light most favorable to the prosecution. To the extent that the trial court may have erred by neglecting to determine whether the evidence, so viewed, was sufficient to support a finding of guilt beyond a reasonable doubt, the error was harmless because the evidence, properly viewed in a light most favorable to the prosecution, was sufficient to allow a rational trier of fact to find that all of the essential elements of unarmed robbery were proven beyond a reasonable doubt. Accordingly, reversal is not required. *People v Buchanan*, 107 Mich App 648, 650; 309 NW2d 691 (1981). As discussed in section III, *infra*, the evidence presented at trial was sufficient to support respondent's adjudication of unarmed robbery.

II. TRIAL COURT'S QUESTIONING

Respondent next argues that the trial court improperly invaded the role of the prosecutor by questioning him and other witnesses. We disagree. Because respondent did not object to the trial court's questions, we review this unpreserved claim for plain error affecting respondent's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

The court rules governing juvenile proceedings expressly allow the trial court to "examine a witness" whenever the court "believes that the evidence has not been fully developed." MCR 3.923(A)(1). Furthermore, MRE 614(b) recognizes that "[t]he court may interrogate witnesses, whether called by itself or by a party." When questioning witnesses to clarify testimony or to elicit additional relevant information, the court must exercise caution to ensure that its questions are not intimidating, argumentative, prejudicial, unfair, or partial. *People v Conyers*, 194 Mich App 395, 404-405; 487 NW2d 787 (1992). A trial court's discretion to question witnesses "is greater in bench trials than in trials before juries." *People v Meatte*, 98 Mich App 74, 78; 296 NW2d 190 (1980).

During direct examination, respondent testified that he initially went to the mall to see a movie, but ended up going to the mall area to look for his friends. When he was confronted by Buckner and Daniels, he had just found his friends standing in the vestibule. He also testified that his friends were not involved in his subsequent fight with Daniels. Respondent challenges the trial court's following questions as improper:

Q. Is it correct that you were going to walk around the mall and look for your friends?

A. Yes.

Q. And by way of coincidence, the moment you walked into the mall there they were all lined up against the wall?

A. Yes.

Q. That was not a prearranged meeting?

A. No.

Q. Sheer coincidence.

A. Coincidence.

Q. Not one of your friends helped you in this fight.

A. No.

Respondent also testified that on the night of the incident, he was wearing a red coat, as opposed to an Al Wissam designer coat, and that he does not own an Al Wissam coat. Respondent's father testified that respondent was wearing his basic red coat on the night of the incident. The defense also presented a Wayne County Juvenile Detention Facility worker who inventoried respondent's clothing. According to the inventory sheet, respondent was wearing a red coat and red designer brand Prada shoes. The worker indicated that he would have made a notation if respondent was wearing a designer brand coat. With regard to respondent's clothing, the trial court asked the following questions:

Q. How much are the Prada shoes?

A. About \$400.

Q. How much is an Al Wissam coat?

A. I don't know.

Q. Do you know what they look like?

A. Yes.

Q. Is this red coat of your dad's similar?

A. No. It's plain.

Q. Pardon me.

A. It's plain compared to Al Wissam.

While the trial court asked respondent additional questions regarding the presence of his friends, the inquiries attempted to clarify whether he had prearranged to meet them. The brief questioning regarding respondent's designer shoes was intended to further develop the evidence surrounding the perpetrator allegedly wearing an expensive designer coat. The inquiries were relevant to a material issue in the case (identity), limited in scope, and presented in a neutral manner. *People v Davis*, 216 Mich App 47, 51-52; 549 NW2d 1 (1996). The fact that the responsive testimony may have contributed to the finding of respondent's guilt does not demonstrate that the trial court's questioning was improper. *Id.* Moreover, although a court must be cautious not to allow its questions to unfairly influence a jury, because this was a bench trial, there was no jury to be unfairly influenced and it cannot reasonably be argued that the trial court was improperly influenced by its own questioning. *People v Wilder*, 383 Mich 122, 125;

174 NW2d 562 (1970). Respondent has not demonstrated that the trial court's questions were improper or prejudicial.

III. SUFFICIENCY OF THE EVIDENCE

Lastly, respondent argues that there was insufficient evidence to support a finding that he committed the offense of unarmed robbery. Again, we disagree. When ascertaining whether sufficient evidence was presented at trial to support a conviction, we view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). “[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the [trier of fact’s] verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Respondent argues that there was insufficient evidence that he used force or violence to support his adjudication for unarmed robbery. MCL 750.530(1) states that a person commits robbery when that person, “in the course of committing a larceny of any money or other property that may be the subject of larceny, uses force or violence against any person who is present, or [] assaults or puts the person in fear.” The phrase “in the course of committing a larceny” includes “acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property.” MCL 750.530(2).

Testimony at trial indicated that respondent approached Daniels’s right side and “snatched” his Cartier glasses off of his face, “pulling him sideward.” Buckner immediately chased respondent and screamed for respondent to return Daniels’s glasses and, in response to Buckner’s demand, respondent punched Buckner in the face. By this time, Daniels ran up and, as Buckner ran to obtain police assistance, respondent and Daniels wrestled and exchanged punches. As Buckner approached with security, respondent’s friends told respondent to run, and respondent shoved Daniels and went outside, where he was arrested. Because “in the course of committing a larceny” is defined to include acts during flight or in an attempt to retain the stolen property, the evidence of respondent’s assaultive conduct toward Daniels and Buckner during their pursuit of respondent and efforts to retain possession of the glasses, viewed in a light most favorable to the prosecution, was sufficient to establish the force or violence element of unarmed robbery beyond a reasonable doubt. See *People v Passage*, 277 Mich App 175, 177-178; 743 NW2d 746 (2007).

Respondent also asserts that there was insufficient evidence to establish his identity as the perpetrator. Identity is an essential element in a criminal prosecution, *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976), and the prosecution must prove the identity of the respondent as the perpetrator of a charged offense beyond a reasonable doubt. *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967). Positive identification by a witness or circumstantial evidence and reasonable inferences arising from it may be sufficient to support a conviction of a crime. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000); *Nowack*, 462 Mich at 400. The credibility of identification testimony is for the trier of fact to resolve and we will not resolve it anew. *Davis*, 241 Mich App at 700.

At trial, Buckner and Daniels identified respondent as the robber, and respondent admitted that he was at the scene and had altercations with both Buckner and Daniels. Buckner explained that although she did not previously know respondent, she “just saw him.” Buckner observed respondent come on Daniels’s right side and take his eyeglasses. She immediately gave chase, “was super close,” “was exactly [r]ight behind him,” and was so close that the mall door “didn’t even shut before [she] got right behind him.” Respondent confirmed that Buckner was “right behind” him. Once Buckner and respondent were in the vestibule, Buckner spoke to respondent and demanded the return of the glasses, and respondent reacted by punching her. Daniels also gave chase and was close behind Buckner. Daniels indicated that although he did not see respondent’s face when his glasses were suddenly taken, he was “face to face” with respondent during their fight, “looked him dead in the his face,” and “would never forget who just took [his] glasses and [] had a fight with[.]” Although the incident occurred in the evening, neither Daniels nor Buckner indicated that they had a problem seeing respondent. The evidence showed that the outside area was illuminated by lighting in the doorway and was well lit, and the vestibule was also well lit. Respondent admitted that when he left Daniels and walked outside, the police were pulling up. The officers found respondent hiding behind a large planter. The evidence showed that both Daniels and Buckner identified respondent as the person who took Daniels’s glasses.

This evidence, viewed in a light most favorable to the prosecution, was sufficient to establish respondent’s identity as the robber. Although respondent argues that the identification testimony was not credible, this challenge is related to the weight rather than the sufficiency of the evidence. *People v Scotts*, 80 Mich App 1, 9; 263 NW2d 272 (1977). The same challenges to the identification testimony that respondent raises on appeal, particularly those involving the red designer coat, were made to the trier of fact at trial. We will not interfere with the trier of fact’s role of determining issues of weight and credibility, *Wolfe*, 440 Mich at 514, and we must draw all reasonable inferences and make credibility choices in support of the trier of fact’s verdict. *Nowack*, 462 Mich at 400. There was sufficient evidence of respondent’s identity.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Deborah A. Servitto

/s/ Douglas B. Shapiro