

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LONNIE RODRIGUEZ CUNNINGHAM,

Defendant-Appellant.

UNPUBLISHED

July 5, 1996

No. 179476

LC No. 93-066236-FC

Before: Smolenski, P.J., and Holbrook, Jr. and F.D. Brouillette,* JJ.

PER CURIAM.

Defendant was convicted following a bench trial of two counts of armed robbery, MCL 750.529; MSA 28.797, and of unlawfully driving away an automobile (UDAA), MCL 750.413; MSA 28.645. He was sentenced to twenty to thirty year prison terms for his two armed robbery convictions and to a concurrent three to five year sentence for his UDAA conviction. He appeals as of right. We affirm.

Defendant broke into a home, awakening its two sleeping inhabitants. When he became aware of their presence, he took them prisoner with the threat of a gun. After searching through their belongings and part of the house in general, he made one person drive him a short distance in a family automobile. Defendant then ordered him out of the car and drove away.

Defendant first argues that there is insufficient evidence to support his two armed robbery convictions. We disagree. A conviction of armed robbery requires proof of three elements: “(1) an assault, (2) a felonious taking of property from the victim's person or presence, and (3) the defendant must be armed with a weapon described in the statute.” *People v Johnson*, 206 Mich App 122, 123; 520 NW2d 672 (1994) (citations omitted). Defendant only appeals as to the sufficiency of the evidence establishing the third element, i.e., that he was armed with a weapon or an article used or fashioned in such a way as to lead a reasonable person to believe that it was a dangerous weapon at the time of the robbery. *People v Jolly*, 442 Mich 458, 465; 502 NW2d 177 (1993). Viewing the

* Circuit judge, sitting on the Court of Appeals by assignment.

evidence in a light most favorable to the prosecution, *People v Hurst*, 205 Mich App 634, 640; 517 NW2d 858 (1994), there was evidence of this element in testimony that defendant was holding an object when he entered the inhabitants' room, that the object was heard dropping to the floor, that a pair of scissors left in another room earlier that night was found near where defendant had been sitting and in defendant's frequent references to being armed. Defendant also argues that his armed robbery sentence, although within the guidelines range, was disproportionate because he is mentally ill. We disagree. We find that, in light of the trial court's articulation of defendant's culpability, defendant has failed to present unusual circumstances sufficient to overcome the presumption of proportionality surrounding his sentence. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994); *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990).

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald E. Holbrook, Jr.
/s/ Francis D. Brouillette