

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN MICHAEL MACPHERSON,

Defendant-Appellant.

UNPUBLISHED

November 25, 1997

No. 198258

Jackson Circuit Court

LC No. 96-074844-FC

Before: Jansen, P.J., and Doctoroff and Gage, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529, MSA 28.797. He was subsequently sentenced to five to fifteen years' imprisonment as a second habitual offender, MCL 769.10; MSA 28.1082. Defendant appeals as of right and we affirm.

This case arises from a robbery of a Mobil gas station in the City of Jackson in the early morning of December 15, 1996. The defense admitted at trial that defendant committed the robbery, but denied that he acted in a way that elevated the offense to armed robbery. Defendant moved for a directed verdict at the close of the prosecution's case, arguing that the prosecution did not submit evidence sufficient to convict him of armed robbery. The trial court denied the motion for a directed verdict on the charge of armed robbery. The sole issue on appeal is whether there was sufficient evidence to support the jury's verdict.

When reviewing the sufficiency of the evidence, this Court must view the evidence in a light most favorable to the prosecution to 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), amended 441 Mich 1201 (1992).

To be convicted of armed robbery, the accused must have possessed a dangerous weapon, or some article fashioned in a manner to induce the victim to reasonably believe that the article was a dangerous weapon. *People v Jolly*, 442 Mich 458, 465; 502 NW2d 177 (1993). It is sufficient if the article itself is harmless, so long as it was used or fashioned in a manner to induce reasonable belief that the article was a dangerous weapon. *People v Parker*, 417 Mich 556, 565; 339 NW2d 455 (1983).

In order to constitute armed robbery, there must be something more than

a victim's subjective belief that his assailant is armed. *People v Banks*, 454 Mich 469, 472; 563 NW2d 200 (1997); *People v Saenz*, 411 Mich 454, 458; 307 NW2d 675, 679 (1981). However, that belief can be induced by the use or fashion of "any article" with which the assailant is armed, including shaping one's hand to look like a gun covered by a coat or pocket. *Id.* "What cannot reach the jury is proof that only focuses on the subjective belief of the victim. In other words, there must be some objective evidence of the existence of a weapon or article. . . ." *Jolly, supra*, p 468.

The victim testified that defendant entered the store, approached the counter, and asked her to "give him the money." When she looked at him questioningly, he asked again, and when he received no response to his second request, he put his hand in his pocket, pointed it at her as if he had a gun, and stated, "Give me the money now, or I'm going to blow your fucking head off." She emptied the cash register, giving him approximately \$135, and he left. As soon as defendant walked out of the station, the victim called 911 and the police arrived. A search ensued and defendant was ultimately tracked to his residence where he was questioned, and his residence was searched.

Defendant initially refused to make a statement to the police, but later initiated an interview in which he confessed to the crime. He admitted that when his oral requests for the money did not work, he put his hand in his pocket to make the clerk believe that he had a gun. At trial, the victim also testified that defendant shaped his hand like a gun inside his pocket, and she demonstrated the action to the jury.

Accordingly, this evidence was sufficient for the jury to find that defendant fashioned an article in a manner to lead the victim to reasonably believe it to be a dangerous weapon. See, e.g., *Jolly, supra*, p 468 (an object pointing out from under a coat, together with a statement threatening the victim, clearly satisfies the statutory definition of armed robbery).

Affirmed.

/s/ Kathleen Jansen

/s/ Martin M. Doctoroff

/s/ Hilda R. Gage