

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARMANDO JOHNSON SACHEL,

Defendant-Appellant.

UNPUBLISHED

January 27, 1998

No. 191463

Mecosta Circuit Court

LC No. 95-003643-FC

Before: Hood, P.J., and McDonald and White, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit armed robbery, MCL 750.89; MSA 28.284, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to 120 to 240 months' imprisonment for the assault with intent to commit armed robbery charge and two years' imprisonment for the felony-firearm conviction. Defendant now appeals as of right. We affirm.

Defendant's convictions arise out of an assault on a man that occurred during the early morning hours of April 8, 1995 at a gas station near the campus of Ferris State University. Within an hour of the incident, defendant allegedly robbed several other people in the same area.

Defendant argues the trial court abused its discretion when it allowed two of the victims in the other April 8 robberies to testify. Assuming without deciding that the admission of the testimony was erroneous, any error was harmless. Even in the absence of the disputed testimony, there was overwhelming evidence of defendant's guilt. The victim identified the clothing defendant was wearing that night as the clothing worn by his assailant. Defendant was placed at the scene of the assault by Worth, Reszke, and Collins, and Collins testified defendant told him he had just "jacked somebody" when he returned to the car after the robbery. The assailant's footprints matched the impressions left by the boots defendant was wearing that night, and defendant's fingerprint was found on a gun that matched the victim's description of the weapon used. In light of the overwhelming evidence of defendant's guilt, any error in the admission of the challenged testimony was harmless because it was

not decisive of the outcome. MCL 769.26; MSA 28.1096; *People v Figgures*, 451 Mich 390, 406; 547 NW2d 673 (1996).

Defendant next argues the trial court reversibly erred when it failed to articulate its reasoning when balancing the prejudicial effect of the other acts evidence against its probative value. We decline to address this issue because it was not raised below. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994); *People v Connor*, 209 Mich App 419, 422; 531 NW2d 734 (1995). Moreover, defendant's argument is without merit. It is clear from the record that the trial court considered both the probative value and the prejudicial effect of the testimony.

Affirmed.

/s/ Harold Hood

/s/ Gary R. McDonald

/s/ Helene N. White