

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

O'NIEL A. ELLINGTON,

Defendant-Appellant.

UNPUBLISHED

March 24, 1998

No. 200308

Recorder's Court

LC No. 95-010277

Before: Holbrook, Jr., P.J., and White and J. W. Fitzgerald,* JJ.

MEMORANDUM.

Defendant appeals as of right from his bench trial convictions of two counts of armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b, MSA 28.424(2). Defendant was sentenced to two to twenty years in prison for each of the armed robbery convictions, and two years in prison for the felony-firearm conviction, the armed robbery sentences to run concurrently with each other but consecutively to the felony-firearm sentence.

Defendant's first issue on appeal is that his jury waiver was invalid because the trial court failed to establish on the record the voluntary and intelligent nature of the waiver. A trial court's determination that a defendant validly waived the right to a jury trial is reviewed for clear error. *People v Leonard*, 224 Mich App 569, 595; 569 NW2d 663 (1997), lv pending.

MCR 6.402(B) provides:

Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

The record shows that the trial court's questioning of defendant was sufficient to establish that defendant voluntarily waived his constitutional right to a jury trial. The court advised defendant that he had a constitutional right to a jury trial, and asked defendant whether he wished to waive his constitutional right to a jury trial. Defendant replied that he did. The court determined that defendant understood that by giving up his right to a jury trial, defendant agreed that the court, rather than twelve citizens, would be listening to the testimony and determining defendant's guilt or innocence. The court further determined that defendant, who was seventeen years old, had an opportunity to discuss his jury waiver with his mother. Finally, defendant acknowledged that he signed a waiver of trial by jury form. Because it would be unreasonable to believe that defendant did not voluntarily waive his right to a jury trial, we conclude that there is no error requiring reversal. *People v Reddick*, 187 Mich App 547, 550; 468 NW2d 278 (1991).

Defendant also claims that the trial court erred in failing to ascertain whether defendant was promised anything or threatened. However, defendant does not claim that he was coerced into waiving his right to trial by jury. Therefore, because the record shows that the trial court's questioning of defendant was sufficient, neither a remand nor a reversal of defendant's convictions is warranted. *Leonard, supra* at 596.

Defendant's second argument is that the trial court erred in denying his motion for a directed verdict. We disagree. When reviewing a denial of a motion for a directed verdict, this Court must consider the evidence presented by the prosecution up to the time the motion was made 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 Peebles*, 216 Mich App 661, 664; 550 NW2d 589 (1996).

The essential elements of an armed robbery are (1) an assault, and (2) a felonious taking of property from the victim's person or presence, while (3) the defendant is armed with a weapon described in the statute. *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

Defendant only disputes the sufficiency of the evidence with regard to element three. Both victims testified at trial that defendant flashed a chrome automatic gun at them and demanded that each turn over anything of value. Because this evidence was sufficient to prove that defendant was armed with a dangerous weapon, we conclude that the trial court properly denied defendant's motion for a directed verdict.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Helene N. White
/s/ John W. Fitzgerald