

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES PERRY,

Defendant-Appellant.

UNPUBLISHED

August 21, 1998

No. 198469

Recorder's Court

LC No. 96-000484

Before: Sawyer, P.J., and Kelly and Doctoroff, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of carjacking, MCL 750.529a; MSA 28.797(1), assault with intent to murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 82.424(2). The trial court sentenced defendant to six to ten years' imprisonment on the carjacking conviction and six to ten years' imprisonment on the assault with intent to murder conviction, both to be served concurrently, and a consecutive term of two years' imprisonment for the felony-firearm conviction. Defendant now appeals as of right. We affirm.

Defendant claims on appeal that the prosecution failed to establish sufficient evidence of his identity as the perpetrator of the crimes with which he was charged and convicted. We disagree.

With respect to determining whether sufficient evidence existed to sustain defendant's conviction in a bench trial, this Court views the evidence in a light most favorable to the prosecution and decides whether any rational trier of fact could have found defendant's guilt beyond a reasonable doubt. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993). Where a defendant waives his right to trial, the trial court "must make specific findings of fact and state its conclusions of law." *Id.* A trial court's findings of fact are sufficient "as long as it appears that the trial court was aware of the issues and correctly applied the law." *Id.*

A prosecutor must prove the identity of the accused as the person who committed the offense as an essential part of a case in order to prove a defendant's guilt. *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967). Both direct and circumstantial evidence suffice to provide the trier

of fact with “an abiding conviction to a moral certainty that the accused was the perpetrator of the offense.” *Id.* Here, the victim positively identified defendant as the perpetrator. In addition, two police officers identified defendant as a passenger in the victim’s stolen vehicle on the day after the carjacking and assault. Therefore, the trial court could find that the prosecutor proved beyond a reasonable doubt that the accused was the perpetrator of the crimes.

Although defendant attempts to raise a variety of issues surrounding the various identifications, the standard of review for sufficiency of the evidence does not allow for a challenge in this Court as to the credibility of the testimony of those persons who identified defendant as the perpetrator. Because the trial court found the victim’s testimony credible in that the victim had the physical ability to perceive defendant at the crime scene and later identified defendant at the photographic line-up, along with the corroborating evidence that defendant lived near the crime scene and defendant was in the victim’s stolen car, the trial court had sufficient evidence of defendant’s identity in order to sustain defendant’s convictions.

Defendant further argues that the trial court’s opinion suggested that codefendant Gray was a credible witness, where it stated, “I found the testimony of [co-defendant] . . . as convincing, at least as the testimony of . . .” the victim. Defendant argues that if the trial court found codefendant credible, then the trial court should have automatically concluded that defendant was not guilty. However, as a general rule, the conviction or acquittal of a defendant charged with the same crime has no “legal effect upon the status of other defendants charged with the same offense, whether the trial be joint or separate” *People v Frye*, 248 Mich 678, 680; 227 NW 748 (1929). Therefore, the trial court had the ability to conclude that the evidence would not support a conviction of the codefendant, but would support defendant’s convictions. Accordingly, defendant is not entitled to reversal on this basis.

Affirmed.

/s/ David H. Sawyer

/s/ Michael J. Kelly

/s/ Martin M. Doctoroff