

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES GERALD BLACKBURNE,

Defendant-Appellant.

UNPUBLISHED

December 1, 1998

No. 202037

Kalamazoo Circuit Court

LC No. 96001061 FH

Before: White, P.J., and Markman, and Young, Jr., JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to commit great bodily harm less than murder, MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to five to twenty years, preceded by the mandatory two year term. Defendant appeals as of right, and we affirm.

Defendant challenges the sufficiency of evidence regarding identification. Defendant does not deny that the crime charged was committed. Rather, he maintains that the prosecutor presented insufficient evidence to support a conclusion that he committed it.

In reviewing the sufficiency of the evidence presented in a criminal trial, we examine the evidence in the light most favorable to the prosecution to determine whether a rational factfinder could have found the essential elements of the crime proved beyond a reasonable doubt. *People v Reeves*, 222 Mich App 32, 34; 564 NW2d 476 (1997). The record reveals that the prosecutor presented ample evidence to support a conclusion that defendant was the shooter. The victim and two other eyewitnesses each unequivocally identified defendant as the shooter in a lineup and again at trial. Defendant cross-examined the witnesses at length and failed to weaken their certainty that defendant was the shooter.

Although there were some discrepancies in the evidence concerning the shooter's clothing, the credibility of identification witnesses is for the factfinder to resolve. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1986). In the instant case, notwithstanding these discrepancies, a rational factfinder could have found beyond a reasonable doubt that defendant was the shooter.

Defendant argues that when the trial court rendered its decision, it failed to: (1) articulate its resolution of the conflicting clothing descriptions and (2) consider whether defendant was entitled to counsel at the in-field identification. Defendant failed to properly preserve these issues by including them in his statement of issues presented for appeal. See MCR 7.212(C)(5), *City of Lansing v Hartsuff*, 213 Mich App 338, 351; 539 NW2d 781(1995), and *Meagher v McNeely & Lincoln, Inc*, 212 Mich App 154, 156; 536 NW2d 851 (1995).

Further, even if defendant had identified these issues in his statement of issues, his arguments are without merit. As to the articulation issue, the trial court discussed at length the eyewitness testimony and specifically found that defendant had been positively identified as the shooter. Although it did not directly address the conflict in the clothing descriptions, that it found defendant guilty (coupled with counsel's considerable emphasis on the discrepancies in closing argument) indicates that the court resolved the conflict in favor of the prosecution. See MCR 2.517(B)(1) (stating that "[b]rief, definite, and pertinent findings . . . on the contested matter are sufficient, without overelaboration or particularization of the facts"). As to the in-field identification issue, the identification was a spontaneous declaration by an eyewitness who had followed defendant, and not a police-conducted in-field identification.

Affirmed.

/s/ Helene N. White

/s/ Stephen J. Markman

/s/ Robert P. Young, Jr.