

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT ROBINETTE,

Defendant-Appellant.

UNPUBLISHED
February 22, 2002

No. 227298
Oakland Circuit Court
LC No. 99-167159-FH

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of unarmed robbery, MCL 750.530, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with unarmed robbery in connection with the theft of a bag of bread and cake from eight-year-old Jackee Connally. At the preliminary examination, Jackee identified defendant as the perpetrator. Defendant moved to suppress the identification on the ground that it was tainted by an unduly suggestive identification procedure. At a hearing, Jackee testified that at 8:30 a.m. on June 15, 1999 she was returning home with a bag of bread and cake when a man approached her from behind, grabbed the bag, and knocked her to the ground. She saw the man's face, and recognized him as someone she had seen in the neighborhood on two or three occasions. Officer Murray testified that Jackee described her assailant as a thin white male with blond hair, blue eyes, a beard, missing teeth, and glasses. Jackee told Murray that she thought that the man lived in a nearby mobile home community. Murray knocked on the door of defendant's home, but received no response. Murray took Jackee and her father to the community later in the day, and Jackee identified defendant as the perpetrator.

The trial court denied defendant's motion to suppress the identification, concluding that while the identification of defendant at his home was unduly suggestive, an independent basis existed for Jackee's in-court identification. The trial noted that Jackee gave an accurate description of defendant based on her observation of him at the time of the incident, and was certain of her identification. At trial Jackee identified defendant as the perpetrator. The jury found defendant guilty of unarmed robbery.

An identification procedure can be so suggestive and conducive to irreparable misidentification that it denies a defendant due process of law. To establish that an identification

procedure resulted in the denial of due process, a defendant must show that the procedure was so suggestive under the totality of the circumstances that it led to a substantial likelihood of misidentification. *People v Williams*, 244 Mich App 533, 542; 624 NW2d 575 (2001). If a witness is exposed to an impermissibly suggestive pretrial identification procedure, his in-court identification of the defendant will not be allowed unless the prosecutor establishes by clear and convincing evidence that the in-court identification has an untainted, independent basis. *People v Gray*, 457 Mich 107, 115; 577 NW2d 92 (1998). To determine if the in-court identification has a sufficiently independent basis, the trial court must hold a hearing and consider the totality of the circumstances. Appropriate factors for consideration include: (1) the witness's prior knowledge of the defendant; (2) the witness's opportunity to observe the perpetrator during the incident; (3) the length of time between the crime and the disputed identification; (4) discrepancies between the pretrial identification description and the defendant's actual appearance; (5) any prior proper identification of the defendant or failure to identify the defendant; (6) any prior identification of another person as the perpetrator; (7) the mental state of the witness at the time of the crime; and (8) any special features of the defendant. *Id.* at 115-116. The determination whether an in-court identification has an independent basis is factual, and the trial court's findings of fact are reviewed for clear error. *Id.* at 115. Erroneously admitted identification testimony warrants reversal only when the error is not harmless beyond a reasonable doubt. *People v Winans*, 187 Mich App 294, 299; 466 NW2d 731 (1991).

Defendant argues that the trial court clearly erred in finding that Jackee's in-court identification had an independent basis. We disagree and affirm defendant's conviction. Jackee testified that she had seen defendant in the neighborhood on previous occasions. The incident did happen quickly. However, Jackee had the opportunity to look directly at the perpetrator's face. The length of time between the crime and the disputed identification was only six hours. Jackee was certain about her identification of defendant. Defendant concedes that Jackee's description of his physical characteristics matched his actual appearance. The only discrepancy was that Jackee's description of the clothes worn by the perpetrator did not match those worn by defendant when the identification was made. Any such discrepancy goes to the weight and not to the admissibility of the identification evidence. *People v Davis*, 241 Mich App 697, 705; 617 NW2d 381 (2000). Jackee made no prior identification of defendant, did not fail to identify defendant, and did not identify any other person as the perpetrator. Although she stated that the incident made her angry, she was able to talk to the police and give an accurate description of defendant, including the observation that defendant had several missing teeth. She provided an accurate description prior to seeing defendant at his home. We conclude that the trial court did not clearly err by finding that under the totality of the circumstances, Jackee's in-court identification of defendant had a sufficiently independent basis. *Gray, supra* at 115-116.

Affirmed.

/s/ Michael R. Smolenski
/s/ Martin M. Doctoroff
/s/ Donald S. Owens