

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEREMY MASSEY,

Defendant-Appellant.

UNPUBLISHED

June 24, 2004

No. 246224

Wayne Circuit Court

LC No. 01-011161-02

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODERICK ALLEN,

Defendant-Appellant.

No. 246225

Wayne Circuit Court

LC No. 01-011161-01

Before: Neff, P.J., and Zahra and Murray, JJ.

PER CURIAM.

Following a joint bench trial, defendants were convicted of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant Allen was also convicted of felon in possession of a firearm, MCL 750.224f. He was sentenced to a prison term of six years, nine months to fifteen years for armed robbery, a concurrent term of one to five years for felon in possession, and a consecutive two-year term for felony-firearm. Defendant Jeremy Massey was sentenced to a prison term of three to fifteen years for armed robbery and a consecutive two-year term for felony-firearm. Defendants appeal as of right. We affirm. These cases are being decided without oral argument pursuant to MCR 7.214(E).

Eugene Rickman was robbed by four individuals, all of whom were carrying guns. They took his glasses, gold chain, two pinkie rings, his watch, his wallet, his cowboy boots, some cash and his cell phone. The following day, Rickman contacted police when he saw the perpetrators standing around a car. Defendant Massey was standing outside the vehicle and was detained by police as he tried to walk away. The driver, Andre Hawkins, was wearing Rickman's gold chain and a belt clip

holder for the cell phone. He also had \$505. Defendant Allen tossed a cell phone on the floor, which was retrieved by the police. An officer called Rickman's cell phone number, and the phone that was retrieved rang.

At trial, Rickman positively identified defendant Allen and defendant Massey as being involved in the robbery. He claimed that defendant Massey held a 9-millimeter gun to his face and asked him why he initially ran from the robbers. He testified that defendant Allen had grabbed his glasses and chain. At the preliminary examination, he had testified that defendant Massey grabbed his glasses and that he did not know who took his chain. Moreover, in a statement given to police he said that another perpetrator had taken the chain, that a light-skinned black male (not defendant Massey) had pointed the gun in his face and asked "how does it feel," and that defendant Massey was eighteen to twenty years old. The trial court nonetheless found that Rickman's identifications were credible.

Defendants argue that the evidence was insufficient to convict them beyond a reasonable doubt. They assert that the identifications were suspect due to the inconsistencies, that the property was not found on them personally (ignoring that defendant Allen was observed discarding the cell phone), and that possession of the stolen goods alone was insufficient to establish that they had taken the items.

In reviewing the sufficiency of the evidence in a criminal case, this Court must review the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This standard applies to bench trials. *People v Legg*, 197 Mich App 131, 132; 494 NW2d 797 (1992). This Court must resolve all evidentiary conflicts in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). [*People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001).]

"Questions of credibility should be left to the trier of fact and will not be resolved anew by this Court." *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

Although the complainant had given prior inconsistent statements, he decisively testified at trial that defendant Massey had pointed the gun at him and that defendant Allen had taken his cell phone and chain. Moreover, he was able to identify the perpetrators the following day even though they were in a different car and place. Although his various statements differed with respect to which perpetrator did what at the time of the robbery, he never wavered on his assertion that defendants Allen and Massey were involved in the robbery. Also, defendant Allen was observed tossing the complainant's cell phone when he was apprehended, and another perpetrator had the complainant's chain and cell phone holder. Based on these facts, a rational trier of fact would be justified in concluding that these defendants were guilty of the armed robbery beyond a reasonable doubt.

Affirmed.

/s/ Janet T. Neff
/s/ Brian K. Zahra
/s/ Christopher M. Murray