

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 15, 2011

v

JONATHAN JEREL WILLIAMS,

Defendant-Appellant.

No. 295241
Ingham Circuit Court
LC No. 09-583-FC

Before: TALBOT, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

Jonathan Jerel Williams challenges his jury trial convictions of armed robbery¹, felon in possession of a firearm², and possession of a firearm during the commission of a felony (felony firearm).³ Williams was sentenced to 120 to 480 months' imprisonment for the armed robbery conviction, 30 to 60 months in prison for possession of a firearm in the commission of a felony, and 2 years' imprisonment for felony firearm. We affirm.

Williams' convictions arise out of a gas station robbery on the evening of October 30, 2008. On appeal, Williams initially contends there was insufficient evidence to support his convictions. Specifically, Williams challenges the evidence identifying him as the perpetrator. We review a sufficiency of the evidence claim de novo.⁴ "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt."⁵

¹ MCL 750.529.

² MCL 750.224f.

³ MCL 750.227b.

⁴ *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

⁵ *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Williams does not dispute the existence of sufficient evidence to permit a jury to determine that the elements for each of the charged offenses were proven beyond a reasonable doubt. Williams also does not challenge the methods used to conduct the various line-ups that led to his identification as the perpetrator. Rather he asserts only that the evidence was insufficient to identify him as the person who committed the charged offenses.

The gas station employee, Rajinder Singh, stated he observed Williams enter the store. While Williams was wearing a jacket with a hood, Singh indicated that he was able to see Williams' forehead and face. Williams approached Singh and first inquired regarding the time. Singh then observed Williams to be holding a firearm in his right hand and standing within five to six feet of him at the time of the robbery. Singh also stated that he had the opportunity to observe Williams, at this distance, for approximately 20 to 25 seconds. A videotape of the robbery was also procured from the store and admitted into evidence along with still photographs produced from the videotape.

When police arrived at the scene, Singh indicated he was 50 percent certain he would be able to identify the robber. Approximately one month later, police showed Singh a photographic array comprised of six individuals. Singh identified Williams as the perpetrator of the robbery from the photographs. Following the arrest of Williams, a physical lineup was also conducted and Singh again identified Williams as the robber.

Williams challenges the identification asserting that Singh's testimony is contrary to the police report, which indicated the robber's face was covered by a hood. Williams also asserts that Singh was hesitant in identifying his photograph based on an indication in the police report that Singh was only 50 percent certain he could identify the perpetrator of the robbery. Williams also suggests that Singh's identification is questionable as Williams had been a patron of the store and, therefore, his appearance was familiar to Singh. For the first time on appeal, Williams suggests the photographic line-up was "unduly suggestive," alleging that the police officer showing the photographs to Singh indicated that he had selected the right person after he identified Williams' photograph, which tainted later line-ups or in-court identifications of Williams by Singh. At trial, the police officer denied any such comment and stated that he read a standard statement to Singh before showing him the photographic line-up and that after Singh identified Williams' photograph, his only further verbal interaction was to request that Singh initial the selected photograph and provide a brief statement or indication of why he selected the photograph.

At trial, Singh testified that when he indicated to police that he was 50 percent certain he could identify the perpetrator he was still very frightened and upset by the events that had transpired. Singh asserted the police report was incorrect in stating that the hood was over the perpetrator's face as it was only over his head and that Singh could observe Williams' facial area during the robbery. Contrary to Williams' assertions, Singh denied being shown the photographic array repeatedly by police. Singh stated he was shown the photographs only on three occasions: (a) once by police for identification, (b) at the preliminary examination, and (c) at trial. When first shown the photographs by police, Singh initialed the photograph of Williams and wrote that his "face looks like" the person who committed the robbery. The lower court record demonstrates that Singh showed no hesitation in identifying Williams during the in person line-up.

“[I]dentity is an element of every offense”⁶ Positive identification testimony may be sufficient to support a conviction.⁷ Although Williams challenges the credibility and reliability of Singh's various identifications and testimony, by necessity this Court views the evidence in a light most favorable to the prosecution. “The credibility of identification testimony is a question for the trier of fact that we do not resolve anew.”⁸

In his Standard 4 brief, Williams raises additional issues of prosecutorial misconduct and ineffective assistance of counsel. Initially, we note that Williams fails to identify with any specificity his allegations of prosecutorial misconduct or ineffective assistance of counsel by citations to the record. “An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority.”⁹ Although these issues are deemed abandoned for appellate review,¹⁰ we will address Williams’ allegations to the extent we are able to discern his allegations of wrongdoing.

In reference to his assertion of prosecutorial misconduct, it would appear that Williams, in actuality, is alleging wrongdoing by the police officers in coercing Singh to identify him as the perpetrator. Contrary to Williams’ contentions, there is nothing in the lower court record to support such a position. Singh adamantly testified that he was shown the photographic array on only three specific occasions and gives no indication that police suggested or influenced his identification of Williams. The police officer conducting the photographic line-up read only a standard statement and then requested Singh designate the photograph selected and his reason. He did not give verbal approval of Singh’s choice or indicate that his selection of Williams’ photograph was correct. As these matters ultimately comprised issues of credibility, this Court will defer to the jury’s credibility assessment.¹¹

Next, Williams contends that the prosecutor “knowingly suppress[ed]” the testimony of a police officer integral to his defense, resulting in a denial of due process. At trial, Williams sought to examine the police officer that originally interviewed Singh at the scene of the robbery, Colin Kacmarsky for purposes of impeachment. Specifically, Williams sought to discredit Singh’s assertion that he could view the face of the robber based on a statement in the police report that a hood covered the facial features of the perpetrator. While originally endorsed by the prosecutor as a witness, at the time of trial Kacmarsky could not be produced because he was out of town on vacation. As a compromise, the prosecution and Williams agreed that the witness statement within the police report would be read into evidence. Williams’ stipulation to this

⁶ *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008).

⁷ *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

⁸ *Id.*

⁹ *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

¹⁰ *Id.*

¹¹ *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998).

compromise to the admission of evidence from the police report in lieu of the police officer's testimony constituted a waiver and precludes appellate review.¹²

We similarly reject Williams' contention of error regarding the admission of evidence of his previous conviction of a felony. Williams stipulated to an earlier felony conviction, in 2007, establishing an element of the current charge of felon in possession of a firearm. Williams' argument on appeal that the jury should not have been informed of this prior felony conviction and that introduction of the evidence was prejudicial was effectively waived by his stipulation.¹³

Finally, Williams contends he was denied effective assistance of counsel. Williams sought and was granted the right to represent himself at trial, with standby counsel available. This Court has previously determined that "standby counsel is not 'counsel' within the meaning of the Sixth Amendment."¹⁴ While standby counsel is permitted to "offer advice, [he or she] . . . does not speak for the defendant or bear responsibility for his defense."¹⁵ Based on previous rulings by this Court, a claim of ineffective of assistance of counsel pertaining to standby counsel is evaluated based on whether a defendant made a knowing waiver of counsel and not on the performance or actions by standby counsel.¹⁶ Almost immediately, at the outset of trial, Williams sought to represent himself and agreed to have standby counsel. At those times during trial when standby counsel spoke on behalf of Williams, the record demonstrates that it was with Williams' specific and unequivocal approval. When Williams asserted his right to act as his own counsel, the trial court properly advised him of the risks associated with self representation, the charges and possible penalties for conviction.¹⁷ Despite acknowledging these risks, Williams affirmatively indicated he wished to proceed with self representation. As Williams made a knowing waiver of his right to counsel and specifically approved those instances where standby counsel spoke on his behalf and the results attained, trial counsel cannot be deemed to have been ineffective.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey

¹² *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000).

¹³ *Id.*

¹⁴ *People v Willig*, 267 Mich App 208, 228; 704 NW2d 472 (2005) (citation omitted).

¹⁵ *Id.*

¹⁶ *People v Dennany*, 445 Mich 412, 445-446; 519 NW2d 128 (1994).

¹⁷ MCR 6.005(D).