

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRE DANIEL COLLIER,

Defendant-Appellant.

UNPUBLISHED

August 2, 1996

No. 181063

LC No. 94-001509

Before: Gribbs, P.J., and Hoekstra and Charles H. Stark,* JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of one count of assault with intent to commit great bodily harm less than murder, MCL 750.84; MSA 28.279, one count of assault with intent to rob while armed, MCL 750.89; MSA 28.28.284, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant then pleaded guilty to being a habitual offender, fourth offense, MCL 769.12; MSA 28.1084. Defendant was sentenced to two years' imprisonment for each of the felony firearm convictions and life imprisonment for each of the assault convictions. Defendant now appeals as of right, and we affirm.

Defendant first argues that there was insufficient evidence to support his convictions. We disagree. Viewed in a light most favorable to the prosecution, a rational trier of fact could have found that the essential elements of the crimes were proven beyond a reasonable doubt. *People Jaffray*, 445 Mich 287; 296; 519 NW2d 108 (1994). Defendant's challenge to the credibility of the witnesses against him is misplaced, as credibility is a matter for the trier of fact and this Court will not determine whether testimony favorable to the prosecution was worthy of belief in reviewing a sufficiency of the evidence claim. See *People v Herbert*, 444 Mich 466, 473-474; 511 NW2d 654 (1993); *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990).

Defendant next argues that he was deprived of a fair trial by the trial court's failure to give a curative instruction after a prosecution witness gave a non-responsive answer which prejudiced defendant. We disagree. After reviewing the comments made by the witness, the trial judge's

discussion with the witness in the presence of the jury, and the other evidence against defendant, we conclude that the trial court's failure to sua sponte give a curative instruction, even assuming arguendo that such failure amounted to error, did not result in a miscarriage of justice and our refusal to reverse defendant's conviction on this basis is not inconsistent with substantial justice. MCL 769.26; MSA 28.1096; MCR 2.613(A).

Finally, defendant argues that his life sentences violate the principle of proportionality set forth in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Having reviewed the circumstances surrounding this offender and offense, we find the sentences to be proportionate.

Affirmed.

/s/ Roman S. Gribbs

/s/ Joel P. Hoekstra

/s/ Charles H. Stark