

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES FOSTER, JR.,

Defendant-Appellant.

UNPUBLISHED

August 16, 1996

No. 179532

LC No. 94-001976

Before: Taylor, P.J., and Murphy and E.J. Grant,* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for armed robbery, MCL 750.529; MSA 28.797, assault with intent to commit armed robbery, MCL 750.89; MSA 28.284, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to eight to twenty years' imprisonment for the armed robbery conviction, to be served concurrently with an eight- to twenty-year sentence for the assault with intent to commit armed robbery conviction, and to a consecutive two-year sentence for the felony-firearm conviction. We affirm.

Defendant argues that there was insufficient evidence presented to convict him of these crimes. In reviewing a sufficiency of the evidence claim, we view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Morton*, 213 Mich App 331, 334; 539 NW2d 771 (1995).

The elements of armed robbery are (1) an assault and (2) a felonious taking of property from the victim's person or presence while (3) the defendant is armed with a weapon described in the statute. *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995). Armed robbery is a specific intent crime for which the prosecutor must establish that the defendant intended to permanently deprive the owner of property. *Id.*

* Circuit judge, sitting on the Court of Appeals by assignment.

The elements of assault with intent to rob while armed are (1) an assault with force and violence; (2) an intent to rob or steal; and (3) the defendant's being armed. *People v Cotton*, 191 Mich App 377, 391; 478 NW2d 681 (1992). Because this is a specific intent crime, there must also be evidence that the defendant intended to rob or steal. *Id.*

Conviction of felony-firearm requires that the prosecutor prove that the defendant possessed or carried a firearm during the commission of any felony or attempted felony. *People v Passeno*, 195 Mich App 91, 97; 489 NW2d 152 (1991).

In viewing the evidence in a light most favorable to the prosecution, we conclude that a rational trier of fact could have found that the essential elements of these crimes were proven beyond a reasonable doubt. Testimony from victim Smith indicated that defendant had a gun, displayed it in the course of taking Smith's automobile and purse, and drove Smith's vehicle away. Testimony from victim Watts indicated that she was approached and threatened with a gun pointed at her head to turn over her money. Moreover, there was testimony which indicated that when defendant was apprehended, he was driving Smith's vehicle and wearing clothes which matched those described by Smith. Where the trial court, sitting as the trier of fact, found this testimony to be credible, we will not interfere with that decision on appeal. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

Defendant also argues that he should be resentenced because the trial court erred in scoring certain offense variables. We disagree.

Appellate review of guidelines calculations is very limited, and this Court will not disturb the scoring where there is evidence to support the scores. *People v Hernandez*, 443 Mich 1, 16-17; 503 NW2d 629 (1993); *People v Johnson*, 202 Mich App 281, 288; 508 NW2d 509 (1993). In this case, defendant's claim is without merit. A review of the record indicates that there is evidence to support the trial court's scoring of the guidelines.

Affirmed.

/s/ Clifford W. Taylor
/s/ William B. Murphy
/s/ Edward J. Grant