

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICARDO JOSEPH,

Defendant-Appellant

UNPUBLISHED

December 18, 1998

No. 203715

Wayne Circuit Court

LC No. 95-013735

Before: O’Connell, P.J., and Gribbs and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of assault with intent to rob while armed, MCL 750.89; MSA 28.284, and possession of a firearm during the commission of a felony, second offense, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to seven and a half to fifteen years’ imprisonment for his assault with intent to rob while armed conviction and five years’ imprisonment for his felony-firearm conviction. We affirm.

Defendant first argues that his constitutional due process rights were violated when he was convicted on the basis of evidence that was legally insufficient to justify a finding of guilt beyond a reasonable doubt. We disagree.

When reviewing the sufficiency of the evidence following a bench trial, this Court must view the evidence in a light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). Circumstantial evidence, and reasonable inferences arising from the evidence, may constitute satisfactory proof of the elements of the offense. *Id.*

In this case, defendant walked into a bar with a sawed-off shotgun and demanded money. Complainant testified that defendant’s face was covered by a black ski mask. Complainant also testified that she saw defendant go out the back door into the alley. Complainant was able to immediately locate a police officer. The officer testified that he went into the alley and saw only defendant, armed with a shotgun. Defendant ran and the officer chased defendant until he caught him.

The officer retrieved a sawed-off shotgun and a black ski-like mask from defendant. This evidence, viewed in a light most favorable to the prosecution, is sufficient to sustain defendant's conviction.

Defendant also argues that the trial court's admission of a shotgun into evidence, without a foundation being laid, violated defendant's due process right to a fair trial. We disagree.

The decision whether to admit evidence is within the discretion of the trial court and will not be admitted on appeal absent clear abuse of discretion. *Price v Long Realty, Inc*, 199 Mich App 461, 466; 502 NW2d 337 (1993).

When offering real evidence, an adequate foundation for admission requires testimony that the object offered is the object which was involved in the incident, and further, that the condition of the object is substantially unchanged. *People v Kemp*, 99 Mich App 485, 489; 298 NW2d 1 (1980). In this case, the police officer identified the challenged exhibit as the weapon that he retrieved from defendant at the time of the assault. Additionally, the officer testified that the weapon was unchanged from when he took it from defendant. A proper foundation was laid and the trial court did not abuse its discretion when it admitted the shotgun into evidence.

Affirmed.

/s/ Peter D. O'Connell

/s/ Roman S. Gribbs

/s/ Michael J. Talbot