

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

August 20, 1996

Plaintiff-Appellee,

v

No. 182148

LC No. 94-001984

ROBERT ANTHONY HOLLAND,

Defendant-Appellant.

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Before: Jansen, P.J., and Reilly and M.E. Kobza,\* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to rob while being armed, MCL 750.89; MSA 28.284, and possession of a firearm during the commission of a felony, MCL 227b; MSA 28.424(2). He was sentenced to five to fifteen years' imprisonment for the conviction of assault with intent to rob, consecutive to the mandatory two years for the felony-firearm conviction. He appeals as of right. We affirm his convictions, but remand for the trial court to grant defendant eleven days of sentence credit.

Defendant first contends that the evidence was insufficient to support his convictions of assault with intent to rob while armed and felony-firearm. When determining whether sufficient evidence has been presented to sustain a conviction, this Court views the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Defendant specifically argues that the prosecution failed to present sufficient evidence that he possessed a firearm during the commission of the assault. The elements of assault with intent to rob while armed are: (1) an assault with force or violence, (2) an intent to steal or rob, and (3) the defendant's being armed. *People v Cotton*, 191 Mich App 377, 391; 478 NW2d 681 (1991). The

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

elements of felony-firearm are that the defendant possessed a firearm during the commission or attempt to commit a felony. *People v Davis*, 216 Mich App 47, 53; \_\_\_ NW2d \_\_\_ (1996).

Taken in a light most favorable to the prosecution, the evidence established that defendant and another man attempted to steal a purse from a woman. Defendant and the complainant struggled over her purse and two gunshots were fired. The complainant never saw a gun, but she believed that the shots came from defendant. Complainant was shot in her right foot. A Detroit Police Officer noticed the two struggling for the purse and he heard the gunshots. Two police officers chased the men they believed were involved in the assault. One officer ultimately apprehended defendant. The police officer's police report indicated that defendant was the shooter. Two of the officers who were chasing defendant testified that they saw defendant throw a weapon onto the roof of a building while he was being chased. Defendant testified that as he and the woman struggled over the purse, Dion came over, pulled her to the ground, and shot the gun into the air. Dion then aimed the gun at the woman, but defendant grabbed it from him. Defendant claimed that the gun fired when he grabbed the gun from Dion. Defendant then fled the scene.

We conclude that this evidence is sufficient for a rational trier of fact to find that the essential elements of assault with intent to rob while armed and felony-firearm were proven beyond a reasonable doubt.

Defendant next contends that he was denied effective assistance of counsel when defense counsel allowed defendant to testify, which assertedly resulted in defendant making several damaging admissions. To the extent that defendant argues that counsel improperly failed to coach him to lie, defendant's claim must be rejected, since an ineffective assistance claim may not be premised on counsel's failure to present perjured testimony. *People v LaVearn*, 448 Mich 207, 216-218; 528 NW2d 721 (1995). Moreover, the decision of trial counsel to call witnesses, including a defendant, is a matter of trial strategy. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). Defense counsel's decision to have defendant testify cannot constitute ineffective assistance of counsel here. Defendant's decision to testify, apparently truthfully, including any damaging statements he may have made, cannot be attributed to defense counsel such that defendant is entitled to a new trial. Defendant was not denied the effective assistance of counsel.

Finally, the prosecution concedes that defendant is entitled to eleven days of credit for time served. When a defendant is improperly denied credit for time served, defendant's sentence may be amended without remanding to the trial court for resentencing. *People v Potts*, 46 Mich App 538, 551; 208 NW2d 583 (1973). Therefore, because the amount of credit due is undisputed, defendant's case is remanded to the trial court for the limited purpose of entering an amended judgment of sentence granting defendant credit for eleven days of time served.

Defendant's convictions are affirmed. We remand for the limited purpose of amending the judgment of sentence to reflect that defendant shall be granted eleven days of sentence credit. Jurisdiction is not retained.

/s/ Kathleen Jansen  
/s/ Maureen Pulte Reilly  
/s/ Michael Eugene Kobza