

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TOMAS EDUARDO MAURICIO,

Defendant-Appellant.

UNPUBLISHED

October 23, 2007

No. 272909

Wayne Circuit Court

LC No. 05-012504-01

Before: Zahra, P.J., and White and O’Connell, JJ.

MEMORANDUM.

Defendant was convicted by a jury of armed robbery, MCL 750.529, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to ten to twenty years in prison for the armed robbery conviction, one to five years in prison for the felon in possession of a firearm conviction and two years in prison for the felony-firearm conviction. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant’s sole argument on appeal is that there is insufficient evidence to support his convictions. We disagree. This Court reviews sufficiency of the evidence claims de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). This 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.” *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999).

Defendant challenges the sufficiency of the evidence that he was armed with a gun. He observes that the police did not recover a gun; the victim reported a gun, but defendant and his girlfriend testified that no weapons were involved; the victim’s alleged injury from the gun was not observed by the police, medically treated, or photographed; and the victim’s testimony regarding the alleged injury differed from his initial report to the police. Thus, defendant argues, there was insufficient credible evidence that he possessed a gun. We disagree.

The victim testified that defendant held him at gunpoint to steal his shoes, and that defendant also used the gun to hit the victim in the ear to prevent his escape. Further, as the victim ran away, he heard someone yell, “shoot that n-----.” Therefore, viewed in the light most favorable to the prosecution, there was sufficient evidence for the jury to find beyond a reasonable doubt that defendant was armed with a gun.

Defendant's insufficiency arguments regarding a lack of demonstrative evidence of a gun and conflicting testimony are unpersuasive. Conflicting testimony and witness credibility are jury issues and this Court generally defers to the jury's resolution. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Here, the jury found that a gun was present based on the victim's testimony, despite conflicting testimony from defendant and his girlfriend, and notwithstanding a conflicting report regarding the location of the injury. We will not disrupt the jury's credibility resolution.

Affirmed.

/s/ Brian K. Zahra
/s/ Helene N. White
/s/ Peter D. O'Connell