

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TUJUAN SHERRARD WALKER,

Defendant-Appellant.

UNPUBLISHED
September 3, 2009

No. 285694
Wayne Circuit Court
LC No. 07-015477-FC

Before: Saad, C.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to rob while armed, MCL 750.89, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to 85 months to 20 years' imprisonment for the assault with intent to rob while armed conviction and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm. This appeal has been 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 Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). This Court reviews the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

The elements of assault with intent to rob while armed are: (1) assault with force and violence, (2) intent to rob or steal, and (3) defendant's being armed. *People v Cotton*, 191 Mich App 377, 391; 478 NW2d 681 (1991). "The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or attempt to commit, a felony." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). The trial court found defendant guilty of assault with intent to rob while armed and felony-firearm on the theory that he aided and abetted Leondre Walker when Leondre shot Joseph Carver.¹ To convict a defendant of aiding and

¹ Leondre was convicted separately of assault with intent to murder, MCL 750.83, felon in possession of a firearm, MCL 750.224f, and felony-firearm. He was sentenced to 30 years to 60 (continued...)

abetting a crime, a prosecutor must prove that: (1) the charged crime was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement which assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that the defendant gave the aid and encouragement. *People v Carines*, 460 Mich 750, 757-758; 597 NW2d 130 (1999). The issue on appeal is whether defendant was the perpetrator of these offenses.

The prosecutor must identify the accused as the person who committed the alleged offense to prove guilt beyond a reasonable doubt. *People v Kern*, 6 Mich App 406, 409; 149 NW2d 216 (1967). Identity may be established through either direct testimony or circumstantial evidence. *Id.* Carver and Jillian Welcher had driven to an alley behind a liquor store to purchase crack cocaine from Leondre. Welcher testified that, immediately before the shooting, she observed a green, four-door car parked at the curb just south of the alley. She also testified that Leondre was in the passenger seat and defendant was in the driver seat of this car. Welcher testified that, after Leondre shot Carver, she saw defendant drive Leondre away. Carver testified that defendant drove a green car when delivering crack cocaine for Leondre. In a statement to police, which he read and signed to be true, defendant stated that he had borrowed a friend's green car and drove Leondre away from the shooting, knowing that Leondre had shot Carver. Therefore, there was sufficient evidence to prove beyond a reasonable doubt that defendant was a perpetrator of these offenses.

Defendant notes that Welcher failed to identify him as the driver until six months after the shooting. He also notes that Welcher has a criminal record and wanted to curry favor with the prosecutor. He argues that conflicting evidence from neighbors to the alley, Karen Hagerman and Shirley Bolden, should have outweighed Welcher's testimony regarding the identity of the driver who aided and abetted Leondre. Hagerman testified that, before the shooting, she observed a dark blue or green car parked near the alley with a black man in the passenger seat and a white woman in the driver seat. Likewise, Bolden testified that she had observed a woman with blond hair sitting in a blue car. After the shooting, Hagerman saw the same black man, who she had seen earlier in the blue or green car, running toward the car and pulling what looked like a gun under his jacket. Next, Hagerman and Bolden saw the same white woman they had noticed earlier drive the car away.

It is not the function of the appellate courts to determine the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992). This role belongs to the trier of fact, who has the opportunity to see and hear witnesses, and is thus in a better position to weigh evidence and determine credibility. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002); *People v Palmer*, 392 Mich 370, 375-376; 220 NW2d 393 (1974). Because this Court defers to the trial court's credibility determinations and all conflicts in the evidence must be resolved in favor of the prosecution,

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years' imprisonment for the assault with intent to murder conviction, two to five years' imprisonment for the felon in possession of a firearm conviction, and two years' imprisonment for the felony-firearm conviction. The convictions and sentences were affirmed by this Court. See *People v Walker*, unpublished opinion per curiam of the Court of Appeals, issued May 12, 2009 (Docket No. 283164).

defendant's argument regarding Hagerman's, Bolden's, and Welcher's testimony fails. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

Affirmed.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Brian K. Zahra