

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH HENDRIX,

Defendant-Appellant.

UNPUBLISHED
February 25, 2010

No. 277919
Macomb Circuit Court
LC No. 2007-000056-FC

ON REMAND

Before: Murphy, C.J., and Jansen and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree felony murder, MCL 750.316(1)(b), carjacking, MCL 750.529a, and unlawfully driving away an automobile (UDAA), MCL 750.413. The convictions arose out of an incident in which defendant carjacked an occupied van while it was parked at a strip mall. Defendant pushed the lone occupant out of the van as he drove away in the stolen vehicle. The victim suffered an injury to the back of her head when thrown from the van, eventually dying from a subdural hematoma associated with the fall. In our first opinion, we rejected myriad arguments presented by defendant and affirmed the convictions. *People v Hendrix*, unpublished opinion per curiam of the Court of Appeals, issued October 16, 2008 (Docket No. 277919). On defendant's application for leave to our Supreme Court, the Court held the application in abeyance pending decisions in *People v Borgne*, 483 Mich 178; 768 NW2d 290 (2009), and *People v Shafier*, 483 Mich 205; 768 NW2d 305 (2009). *People v Hendrix*, __ Mich __; 762 NW2d 492 (2009). Subsequently, our Supreme Court, in lieu of granting leave to appeal, remanded the case to us "for consideration of the issue raised by the defendant but not addressed by . . . [our] . . . initial review of this case, specifically, whether the prosecutor presented sufficient evidence of the defendant's identity as the person who stole the van and pushed the victim from the van during the theft." *People v Hendrix*, __ Mich __; 775 NW2d 796 (2009). With respect to all of the other issues raised by defendant, leave to appeal was denied. *Id.* We affirm, finding that there was sufficient evidence showing that defendant was the person who committed the charged crimes.

We initially note that *Borgne* and *Shafier* concerned prosecutorial commentary on a defendant's silence, which issue we addressed in the first opinion, ruling against defendant. Given that we have now been directed to address only the sufficiency argument, with the

Supreme Court denying defendant's application as to the issue regarding his right to remain silent, *Borgne* and *Shafier* play no role here in our analysis and ruling.

Defendant argues that there was insufficient evidence to support the convictions, where no one identified him as the perpetrator, the victim's description of the perpetrator did not match defendant, there was no video surveillance showing that defendant committed the crimes, and where the only link between defendant and the crimes was circumstantial evidence that he was later found in the car six hours after the crimes were committed, which evidence was tenuous and insufficient to infer guilt. We disagree.

We review de novo a claim that the evidence was insufficient to sustain a verdict. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution 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 Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992). This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. *Id.* at 514-515. Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). "[C]ircumstantial evidence is oftentimes stronger and more satisfactory than direct evidence." *Wolfe*, 440 Mich at 526 (citation omitted). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). "[I]t is well settled that identity is an element of every offense." *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008).

The record reflects that, approximately six hours after the crimes were committed, the police pulled defendant over as he was driving the stolen vehicle. Defendant incredulously told police that he did not know how he came to be in possession of the van. Further, as indicated in our first opinion, there was admissible MRE 404(b) evidence on the issue of identity, showing that defendant had engaged in a recent pattern of stealing vehicles in the area of the instant crimes and that the thefts occurred under similar circumstances, establishing a modus operandi. As previously held, the prior bad acts were sufficiently unique, constituting defendant's signature under *People v Golochowicz*, 413 Mich 298, 319; 319 NW2d 518 (1982). There were no more similar thefts of vehicles following defendant's apprehension, thereby further supporting a conclusion that defendant was the culprit. Additionally, the fingerprints in the van that the police were able to check for a match belonged solely to defendant, and the testimony suggested that items found in the stolen van had been claimed by defendant's girlfriend. Viewing all of this evidence in a light most favorable to the prosecution, resolving any and all evidentiary conflicts in favor of the prosecution, and recognizing that circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the crimes, we hold that the evidence was sufficient to establish that defendant was indeed the perpetrator. It was up to the jury to determine what inferences could be fairly drawn

from the evidence and to determine the weight to be accorded those inferences, and we find no basis in the record to interfere with the jury's role and its verdict.

Affirmed.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald