

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS HOWARD MCDANIEL,

Defendant-Appellant.

UNPUBLISHED
February 25, 2010

No. 290297
Oakland Circuit Court
LC No. 2008-223406-FC

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

A jury convicted defendant of second-degree home invasion, MCL 750.110a(3), and the trial court sentenced defendant to a prison term of nine to 40 years. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the evidence was insufficient to establish that he was the perpetrator of the home invasion. In reviewing the sufficiency of the evidence, this Court must view the evidence de novo in the 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 Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). However, this Court should not interfere with the fact finder's role of determining the weight of evidence or the credibility of witnesses. *Wolfe*, 440 Mich at 514; *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007). The identity of a person who commits a crime is an essential element of the crime, but may be proven by direct or circumstantial evidence. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976); *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008).

Viewed in a light most favorable to the prosecution, the evidence demonstrated that a home invasion occurred and that defendant was the perpetrator. The victim returned to her townhouse and found that the back door jam was splintered. When she opened the back door, she could hear the front door opening or closing, even though no one else was supposed to be home. The victim opened the front door and saw a man outside on her steps. It was only 5:15 p.m. and she was able to get "a good look at him." He was black, in his mid 40s or 50s, had salt and pepper hair, and was wearing an olive-colored jacket, tan pants, and brown shoes with black rubber soles. He was carrying a black satchel. The victim could see both her wallet, which she

had left in her purse in the upstairs bedroom, and some latex gloves in the man's pocket. She was able to follow him until they came to a dead end, when the victim became fearful that the man would become violent now that he was trapped. The victim backed off and then lost sight of the man. Meanwhile, the victim's neighbor had heard her calls for help, and he followed the man that the victim had been pursuing. The man was wearing a green jacket and tan pants, though the neighbor did not see him carrying anything until he emerged on the other side of a parking structure. The neighbor, too, lost sight of the man once police arrived.

The police took the victim home to see what was missing. She noticed that her computer and some jewelry had also been taken. The victim was taken to a SMART bus in order to observe the passengers and see whether any of them were the perpetrator. The victim was able to look everyone over thoroughly, but she did not see anyone matching the perpetrator's characteristics. While this was happening, an officer in the area noticed a man matching the suspect's description standing underneath an overhang. The man stepped back, in what the officer believed was an attempt to avoid detection. Another officer also made contact with a man matching the suspect's description. Both officers radioed the officer with whom the victim was riding, alerting him that a man matching the description was walking in town. The officer drove to the area, saw the man, and asked the victim "if that could be him." The victim looked and said "it could be." She became convinced that it was the man when he walked in front of the patrol car and she had a closer look. The victim was positive that it was defendant who had been in her house, especially when the officer "started to walk [defendant] over there and put him in the car and detain him. And as he was walking by then I realized you know that's him." When asked if defendant was the individual who broke into her house, the victim testified that there was no doubt in her mind that he was the man. Similarly, the neighbor was unequivocal in his identification of defendant as the man he had been chasing. The neighbor was "one hundred percent certain" that defendant was the man he pursued that day. There was "no doubt" in his mind that defendant was the person.

In addition to the foregoing testimony, a black satchel was found near the SMART bus stop. It looked as though someone had tried to hide it. Inside were a green jacket, latex gloves, a pry bar, and the victim's personal property. Defendant gave false information to the police officers when he was first questioned and also provided an incredible explanation for why he was in the area. He indicated that a friend had driven him to the area in order to catch a bus but could not provide the friend's name or the type of car he arrived in. The foregoing evidence would allow a reasonable jury to conclude that a home invasion took place and that defendant was the perpetrator.

Defendant next argues that the sentencing court should have used its discretion and awarded him credit for time spent in jail before sentencing. Defendant does not dispute that he was on parole when this latest offense occurred. Our Michigan Supreme Court has recently definitively found that the jail credit statute, MCL 769.11b, "does not apply to a parolee who is convicted and sentenced to a new term of imprisonment for a felony committed while on parole." *People v Idziak*, 484 Mich 549, 562-563; 773 NW2d 616 (2009). Instead, pursuant to MCL 791.238(2),

once arrested in connection with the new felony, the parolee continues to serve out any unexpired portion of his earlier sentence unless and until discharged by the Parole Board. For that reason, he remains incarcerated regardless of whether

he would otherwise be eligible for bond before conviction on the new offense. He is incarcerated not “because of being denied or unable to furnish bond” for the new offense, but for an independent reason. Therefore, the jail credit statute, MCL 769.11b , does not apply. [*Id.*]

Because defendant was on parole at the time he committed this offense, he was not entitled to any credit for time spent in jail before sentencing, and the sentencing court “lacked the authority to grant defendant credit against his new minimum sentence.” *Id.* at 569.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Mark J. Cavanagh

/s/ Alton T. Davis