

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TAIWO DUVALL HALL,

Defendant-Appellant.

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UNPUBLISHED

July 15, 2010

No. 292032

Wayne Circuit Court

LC No. 08-016626-FC

Before: TALBOT, P.J., and FITZGERALD and DAVIS, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to do great bodily harm less than murder, MCL 750.84, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, second offense, MCL 750.227b. The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of three to ten years for the assault conviction and 14 months to 5 years for the felon-in-possession conviction, to be served consecutive to a five-year term of 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 claim on appeal is that the evidence was insufficient to identify him as the person who committed the charged crimes. A challenge to the sufficiency of the evidence is reviewed de novo. *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). This Court must review the record to determine whether the evidence, viewed in a light most favorable to the prosecution, would enable a rational trier of fact to find that the essential elements of the charged crimes were proven beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). It is for the trier of fact 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).

Identity is an essential element of a criminal prosecution, *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976), and the prosecution must identify the accused as the person who committed the charged offenses. *People v Kern*, 6 Mich App 406, 409; 149 NW2d 216 (1967). "The prosecutor is not required to present direct evidence linking the defendant to the

crime.” *People v Saunders*, 189 Mich App 494, 495; 473 NW2d 755 (1991). The defendant’s identity may be proven by circumstantial evidence alone. *People v Garcia*, 33 Mich App 598, 600; 190 NW2d 347 (1971); *Kern*, 6 Mich App at 409-410.

Alibi testimony is “testimony offered for the sole purpose of placing the defendant elsewhere than at the scene of the crime.” *People v Watkins*, 54 Mich App 576, 580; 221 NW2d 437 (1974). “Although alibi is frequently characterized as a defense, it is in fact merely a rebuttal of the prosecution’s evidence.” *People v Burden*, 395 Mich 462, 466; 236 NW2d 505 (1975) (KAVANAGH, C.J.). The defendant “does not have the burden of proof on the alibi issue,” but he does have “the burden of producing at least some evidence in support of his claim of alibi[.]” *People v Fiorini*, 85 Mich App 226, 229; 271 NW2d 180 (1978). But the burden of proof remains with the prosecutor to prove “beyond a reasonable doubt that the defendant did commit the crime and that, therefore, the defendant was at the scene of the crime at the time it was committed.” *People v Erb*, 48 Mich App 622, 629-630; 211 NW2d 51 (1973).

“It is within the jury’s province to determine the credibility of all witnesses, including any whose testimony tends to establish an alibi.” *People v Diaz*, 98 Mich App 675, 682; 296 NW2d 337 (1980). “Witness credibility and the weight accorded to evidence is a question for the jury, and any conflict in the evidence must be resolved in the prosecution’s favor.” *People v McGhee*, 268 Mich App 600, 624; 709 NW2d 595 (2005). The jury is “free to believe or disbelieve, in whole or in part, any of the evidence presented at trial.” *People v Eisenberg*, 72 Mich App 106, 115; 249 NW2d 313 (1976). In deciding whether the evidence at trial was sufficient to sustain a conviction, “[t]his Court will not interfere with the role of the trier of fact of determining the weight of the evidence or the credibility of witnesses.” *People v Hill*, 257 Mich App 126, 141; 667 NW2d 78 (2003).

The victim, Dwayne Weaver, testified that defendant shot him outside an after-hours club. The defense witnesses testified that defendant was not in the area of the club at the time of the shooting, but rather was at the home of his girlfriend, where he had spent the night. Weaver, who was well-acquainted with defendant, testified that he saw defendant waving a gun in his general direction and that he was shot in the buttocks as he was trying to leave the area. Although Weaver did not actually see defendant fire the shot that struck him, Weaver indicated that the shot came from the area where defendant was standing and that defendant was the only person in that area. This evidence, if believed, was sufficient to prove beyond a reasonable doubt that defendant was the person who committed the crimes charged. It is apparent that the jury found Weaver’s testimony more credible than the testimony of the defense witnesses, and this Court “will not resolve credibility issues anew on appeal.” *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002).

Affirmed.

/s/ Michael J. Talbot  
/s/ E. Thomas Fitzgerald  
/s/ Alton T. Davis