

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS DIONNE-JUAN BELL,

Defendant-Appellant.

UNPUBLISHED

December 16, 2010

No. 293528

Wayne Circuit Court

LC No. 09-003771-01-FC

Before: SHAPIRO, P.J., and SAAD and KELLY, JJ.

PER CURIAM.

Defendant's convictions arise out of a robbery of a Staples office supply store in Detroit by three or more men. A jury convicted defendant of four counts of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to four concurrent terms of 11 1/2 to 20 years' imprisonment for the armed robbery convictions, and two years' imprisonment for the felony-firearm conviction. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that the prosecution failed to present sufficient evidence to convict defendant of four counts of armed robbery and felony-firearm. We disagree. When analyzing a claim based on insufficient evidence, we review the record de novo. *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). We view the evidence in "a light most favorable to the prosecution and determine if any rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt." *Id.*

Defendant does not dispute that someone committed armed robbery at the Staples store, but argues that the prosecution did not prove defendant's involvement beyond a reasonable doubt. At trial, the prosecution attempted to establish defendant's guilt with the following evidence: a fingerprint matching defendant's right thumb found on a vinyl bag near the scene and testimony from two eye witnesses identifying defendant as robbing the store at gunpoint. Defendant attempts to discredit the witnesses' credibility by arguing that he is considerably taller than the descriptions given, and that store employee Brandy Muhammed failed to identify defendant in the pretrial photographic lineup. Defendant further claims that the fingerprint collected on the vinyl bag was insufficient to demonstrate that he was present at the time of the robbery.

The elements of armed robbery are: (1) an assault, (2) a felonious taking of property from the victim's presence, (3) while the defendant was armed with a weapon described in the statute. MCL 750.529; *People v Ford*, 262 Mich App 443, 458; 687 NW2d 119 (2004). To be guilty of felony-firearm, a person must carry or possess a firearm during the commission of, or the attempt to commit, a felony. MCL 750.227b; *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003). "It is well settled that identity is an element of every offense." *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008).

Defendant questions the witnesses' credibility on appeal. Defendant contends that because of the discrepancy between the witnesses' descriptions of the gunman's physique and defendant's actual height and build, the witnesses' identifications of him are invalid. Defendant cites no authority for the proposition that prior inconsistent descriptions undermine in-court witness identifications. Moreover, this Court has held that eyewitness testimony is sufficient to establish a person's guilt. See *People v Malone*, 193 Mich App 366, 371; 483 NW2d 470 (1992), *aff'd* on other grounds 445 Mich 369 (1994). And it is the factfinder's role to determine the credibility of the witnesses and to weigh the evidence, *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). The jury heard defense counsel impeach the witnesses with their prior descriptions of defendant, and still determined that defendant was guilty. Furthermore, the parties disputed defendant's actual height, and the jury was in the best position to compare the witnesses' initial descriptions to defendant's height. We must accept the jury's assessment of the witnesses and not substitute our own judgment.

Viewing the evidence in a light most favorable to the prosecution, we conclude that there is sufficient evidence to prove defendant's involvement in the robbery based on witness testimony alone. Store manager Marion Popper was in close proximity to the gunman for about 15 minutes in a well-lit store and identified defendant as the gunman in a photographic lineup and in court. Although she may have underestimated defendant's height at trial, she testified that she committed the gunman's face to memory and consistently maintained that defendant was the gunman. Muhammed failed to identify defendant at the first lineup, though she identified him later in court, but even if her identification was excluded, Popper's identifications of defendant would be sufficient to establish defendant's guilt.

Defendant also claims that the fingerprint evidence is insufficient. "The general rule is that fingerprint evidence alone is sufficient to establish identity if the prints are found at the scene of the crime under such circumstances that they could only have been made at the time of the commission of the crime." *People v Himmelein*, 177 Mich App 365, 374-375; 442 NW2d 667 (1989). "The evidence of experts as to the identity of latent and actual [finger]prints is a proper subject for the consideration of a jury, and the weight to be given such testimony is for the jury to determine." *People v Willis*, 60 Mich App 154, 158; 230 NW2d 353 (1975) (quoting *People v Les*, 267 Mich 648, 652; 255 NW 407 (1934)).

Defendant claims that because the fingerprint expert was unable to determine the fingerprint's exact age, it is not sufficient to support a conviction. We disagree. Whether the location and circumstance of the fingerprint was sufficient to establish defendant's identity as one of the robbers was a matter of fact for the jury. The jury heard extensive testimony from Kathleen Boyer, a certified fingerprint expert, regarding the fingerprint. The bag containing money, where the fingerprint was discovered, was found shortly after the robbery just outside the Staples where the robbery occurred. A rational trier of fact could conclude that defendant could

have only touched that bag with the money inside leaving his fingerprint if he had been involved with the robbery. Moreover, multiple witnesses placed defendant at the scene, corroborating the fingerprint evidence.

The prosecution presented sufficient evidence to identify defendant as one of the armed robbers and convict defendant of armed robbery and felony-firearm. The police found defendant's fingerprint on one of the stolen bags of money right outside of the Staples store. Popper, the store manager who was in the gunman's presence for about 10 to 15 minutes, consistently identified defendant as one of the robbers. Although Muhammed did not initially identify defendant as one of the robbers, she identified him at trial. Moreover, defendant does not question that an armed robbery occurred at the Staples. As a result, sufficient evidence was presented to support defendant's convictions.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Henry William Saad
/s/ Kirsten Frank Kelly