

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JORDAN JAVON GRANDERSON,

Defendant-Appellant.

UNPUBLISHED

June 19, 2012

No. 303616

Saginaw Circuit Court

LC No. 09-033498-FJ

Before: BORRELLO, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

Defendant was convicted following a jury trial of four counts of assault with intent to murder, MCL 750.83, two counts of possession of a firearm during the commission of a felony, MCL 750.227a, and one count of carrying a deadly weapon with unlawful intent, MCL 750.226. For the reasons set forth in this opinion, we affirm the convictions and sentences of defendant.

This appeal arises from a shooting in the City of Saginaw on September 26, 2009. On that date, Branden West was driving his vehicle in the City of Saginaw with Lee Abraham seated in the front passenger's seat, his girlfriend Jalessa Riley, seated in the rear passenger's seat, and Riley's six-month-old nephew La'Zeric Riley seated in the rear driver's side. While driving, West approached a group of males who had congregated on Walnut Street. According to the testimony of Jalessa and West, a tall light-skinned male had a chrome pistol in his hand. Both Jalessa and West testified that the tall light-skinned man raised the gun and fired shots into the car, causing windows to shatter. West testified that "lots" of shots were fired, resulting in West losing control of the vehicle and crashing into a tree.

After the crash, West discovered he had been shot in the neck and shoulder. He believed Abraham was dead because he was unresponsive. Jalessa testified that she broke her right ankle and right arm, while her nephew, La'Zeric was shot and bleeding. Michigan State Trooper Rick Jones, who responded to the scene, plugged La'Zeric's bleeding with his finger as he rushed the infant to St. Mary's hospital. At the hospital, the infant was under the care of emergency room physician Dr. George Roller. According to the testimony of Dr. George Roller, La'Zeric had been shot once with the bullet entering through the child's back and exiting through the groin. Dr. Roller operated on La'Zeric, then had the infant transported to a medical facility better suited for infant care. Dr. Roller opined that La'Zeric survived based on two factors: expeditious police action and divine intervention.

While at the scene, Jalessa did not identify defendant because some of defendant's friends were still at the scene of the shooting. While at the hospital, Jalessa identified defendant as the shooter from a photo out of a lineup. Jalessa testified that she knew defendant because she had spoken to defendant in person two days prior to the shooting when he asked her for her telephone number. During trial, Jalessa again identified defendant as the shooter.

Based on Jalessa's identification of defendant as the shooter, police prepared an arrest warrant for defendant. A subsequent search of defendant's home yielded a letter from defendant to his brother wherein defendant requested his brother obtain a Michigan Bridge Card so that defendant could use it to obtain "an ounce of green and a ball of dope," in turn to trade for "an all chrome Tech-9 with an extend and a cooling system." A firearms expert testified that a nine millimeter and .22 casings were recovered from the scene of the shooting.

Defendant was convicted of the crimes listed above and this appeal ensued.

On appeal, defendant asserts that the evidence presented at trial was insufficient to establish his identity as the shooter. "Even though unpreserved, a question of sufficiency of evidence may be reviewed de novo by this Court in a criminal case." *People v Osby*, 291 Mich App 412, 415; 804 NW2d 903 (2011); *People v Patterson*, 428 Mich 502, 514; 410 NW2d 733 (1987). "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992).

Defendant asserts that a pretrial, photographic lineup is invalid, with some exceptions, where the suspect is in custody. See *People v Kurylczyk*, 443 Mich 289, 298; 505 NW2d 528 (1993). However, defendant does not direct this Court to any portion of the record wherein we could conclude that the identification of defendant by Jalessa occurred when defendant was in custody. Rather, our review of the record leads us to conclude that Jalessa's identification formed the basis of the arrest warrant for defendant, thereby leading us to conclude that defendant was not in custody at the time of the photographic lineup. However, even if we were to presume the photographic lineup was tainted, the in-court identification of Jalessa and West would still be sufficient to convict defendant. In *United States v Crews*, 445 US 463; 100 S Ct 1244; 63 L Ed 2d 537 (1980), a majority of the United States Supreme Court held that "an in-court identification of the accused by the victim of a crime should not be suppressed as the fruit of the defendant's unlawful arrest." *Id.* at 477. According to the Supreme Court, even if a pretrial identification of the defendant is tainted, the in-court identification is admissible if the victim had independent recollection of the defendant which antedated the unlawful police conduct. *Id.* Our Supreme Court has similarly held that when a victim's in-court identification of an illegally arrested defendant is a product of the victim's opportunity to observe the defendant at the time of the offense, that identification is made independent from the police taint and is admissible. *People v Jackson*, 46 Mich App 764, 771; 208 NW2d 526 (1973). In *Crews*, the victim's recollection and identification of the defendant were shown to be untainted by the illegal conduct of the police. *Crews*, 445 US at 472-473. Similarly, in the present case, Jalessa's testimony at trial reveals that her in-court identification of defendant was independent of the presumed tainted pretrial identification. Jalessa testified that defendant had approached her two

days prior to the shooting and asked for her telephone number. Jelessa's testimony sufficiently reveals that her in-court identification of defendant was based on her independent recollection of her encounter with defendant. Thus, even presuming defendant was in custody at the time of Jalessa's initial identification of defendant, her in-court identification of defendant was not influenced by a presumed tainted lineup identification. Because Jalessa gave sufficient testimony at trial to establish an independent basis for her in-court identification of defendant, we assign no error.

Our role, "when determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *Wolfe*, 440 Mich at 508. In this case, defendant does not challenge the elements of the offense, only the issue of whether he was present. Positive identification by witnesses may be sufficient evidence to support conviction of a crime. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Accordingly we find that the testimony of West and Jalessa as to the identification of defendant coupled with the testimony of others who saw defendant near the scene just prior to the shooting could lead a rational trier of the facts to conclude beyond a reasonable doubt that defendant committed the offenses for which he was convicted.

Affirmed.

/s/ Stephen L. Borrello
/s/ Peter D. O'Connell
/s/ Michael J. Talbot