

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
September 13, 2012

v

RAYMOND RAHEEM DICKERSON,
Defendant-Appellant.

No. 304609
Wayne Circuit Court
LC No. 10-011423-FC

Before: FORT HOOD, P.J., and METER and MURRAY, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of armed robbery, MCL 750.529, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, to 200 to 420 months' imprisonment on armed robbery, two years' imprisonment for felony-firearm, and one to five years' imprisonment for being a felon in possession of a firearm. The felony-firearm sentence is consecutive to the other two sentences, which run concurrently with each other. We affirm.

Two armed men broke into the victims' home. The men took money and valuables. At trial, despite some discrepancies in their testimony, both of the victims identified defendant as one of the men who robbed them. The victims knew defendant because he dated a cousin of one of the victims, and each victim had met defendant several times. One victim testified that she was "100 percent certain" defendant was one of the men and picked defendant out of a photographic array.

Defendant argues that the prosecution failed to introduce sufficient evidence from which a rational trier of fact could conclude beyond a reasonable doubt that defendant was one of the robbers.

This Court reviews the sufficiency of the evidence de novo and "reviews the evidence in the light most favorable to the prosecution." *People v Harverson*, 291 Mich App 171, 175; 804 NW2d 757 (2010). There must be sufficient evidence introduced for a rational trier of fact to find the essential elements of the crime were proven beyond a reasonable doubt. *Id.* This same standard applies in a bench trial. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000) aff'd 466 Mich 39 (2002). The identity of the perpetrator is an essential element of every crime and must be proven beyond a reasonable doubt. *People v Kern*, 6 Mich

App 406, 409; 149 NW2d 216 (1967). Identity can be proven by direct or circumstantial evidence or by the reasonable inference taken from that evidence. *Id.*; *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999).

Here, two witnesses who were previously acquainted with defendant each testified conclusively that defendant was one of the men who robbed them. This testimony was sufficient to convince a rational trier of fact beyond a reasonable doubt that defendant was one of the men who broke into the victims' home. See *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000) (“[P]ositive identification by witnesses may be sufficient to support a conviction of a crime.”). Further, it is up to the trier of fact to determine the credibility of witnesses, and it may accept or reject any or all of the testimony of any witness. *People v Kanaan*, 278 Mich App 594, 621; 751 NW2d 57 (2008); *People v Cummings*, 139 Mich App 286, 293-294; 362 NW2d 252 (1984). The trial court apparently credited the victims' testimony, and this Court will not interfere with the trier of fact's role in determining credibility. *Kanaan*, 278 Mich App at 621.

Because both victims testified conclusively and unequivocally that defendant was one of the men who robbed them, the prosecution introduced sufficient evidence from which a rational trier of fact could conclude beyond a reasonable doubt that defendant was, in fact, one of the men who robbed the victims.

Next, defendant argues that he received ineffective assistance of counsel because his trial counsel did not call him to testify and failed to investigate defendant's suggestion that a surveillance camera at a nearby restaurant might have captured some of the events and might exonerate him.

To determine whether counsel was constitutionally deficient, defendant must establish that (1) counsel's performance fell below “an objective standard of professional reasonableness”; and (2) “that it is reasonably probable that, but for counsel's ineffective assistance, the result of the proceeding would have been different.” *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007). “Defendant must overcome a strong presumption that counsel's performance constituted sound trial strategy.” *Id.* at 667-668 (quotations and citation omitted). Where, as here, no evidentiary hearing was held on this issue, the defendant's argument is limited to errors apparent from the record. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995).

There is no evidence in the record that defendant requested that his attorney investigate the possibility of a videotape from the restaurant or that such a videotape may have even existed. Because there is no evidence on the record to support his arguments, defendant has failed to establish the factual predicate, *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999), and so has not met his burden of showing that counsel's performance fell below an objective standard of professional reasonableness, *Jordan*, 275 Mich App at 667.

Finally, defendant waived his right to testify in open court on the record after being advised by the trial court of his absolute constitutional right to testify. The waiver appears knowing and voluntary, and defendant does not argue otherwise. Nor is there any evidence to support his argument that counsel was ineffective in failing to call defendant as a witness. In any event, “[t]he decision to testify or not testify is usually considered a matter of trial strategy which

this Court will not disturb on appeal.” *People v Johnson*, 168 Mich App 581, 586; 425 NW2d 187 (1988).

Affirmed.

/s/ Karen M. Fort Hood

/s/ Patrick M. Meter

/s/ Christopher M. Murray