STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 11, 2012
v	No. 305553 Oakland Circuit Court
MARK WAYNE ARNETT, Defendant-Appellant.	LC No. 2011-235798-FC

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

PER CURIAM.

Defendant was convicted, following a jury trial, of two counts of armed robbery, MCL 750.529, and one count of falsely reporting a felony, MCL 750.411a. Defendant was sentenced, as a habitual offender, fourth offense, MCL 769.12, to a term of 25 to 60 years' imprisonment for the two armed robbery convictions, and 4 to 15 years' imprisonment for the false report conviction. Defendant appeals by right. We affirm.

On January 17, 2011, defendant's longtime girlfriend saw defendant unresponsive at his kitchen table at his home. She was unable to enter the home. Defendant's sister was able to enter the home with a key, and the women had to shake defendant a couple times to wake him. Defendant had "issues" with Vicodin, and his girlfriend indicated that she would end the relationship unless he stopped taking the medication. On January 18, 2011, defendant told his girlfriend that he had flushed his Vicodin pills down the sewer.

On January 20, 2011, defendant entered a Kroger grocery store near his home, proceeded to the pharmacy, placed a package with an antenna on the counter, and identified the package as a bomb to the pharmacist. Defendant demanded that the pharmacist give him 1000 Vicodin pills or he would trigger the bomb by cellular telephone. The pharmacist requested assistance from the pharmacy technician who was waiting on a customer at the drive-thru window. The women discussed the fact that they did not have 1000 Vicodin pills. The pharmacist gave defendant a bottle containing 100 generic Vicodin pills, and he took the bottle and left. The pharmacy technician returned to the drive-thru window to tell the customer to leave and observed the direction that defendant proceeded on foot. A police canine unit was called to the scene. It was a windy, snowy day that impacted the dog's tracking ability. However, the dog led his handler to Everest Drive where the scent was interrupted by shoveled snow. Defendant resided at 5800 Everest Drive.

The employees of the pharmacy gave descriptions of the perpetrator after the crime. Later, they were presented with photographic line-ups, and each woman identified defendant as the man who demanded Vicodin with a bomb. Although the women acknowledged inconsistencies between the description given to police and defendant's physical characteristics, they both testified at trial that defendant was the robber.

Defendant's sole issue on appeal alleges that the jury verdict was against the great weight of the evidence, thereby entitling him to a new trial. We disagree. A defendant preserves a challenge to the great weight of the evidence by moving for a new trial on this basis in the trial court. *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008). There is no indication in the lower court record that defendant filed a motion for new trial. Accordingly, defendant's great weight argument is reviewed for plain error affecting his substantial rights. *People v Cameron*, 291 Mich App 599, 618; 806 NW2d 371 (2011). The plain error rule requires a defendant to "show that (1) error occurred, (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected a substantial right of the defendant." *People v Pipes*, 475 Mich 267, 279; 715 NW2d 290 (2006) (footnote omitted). If a defendant fails to demonstrate plain error affecting a substantial right, the reviewing court takes no action. *Id*. If a defendant demonstrates plain error affecting a substantial right, "reversal is only warranted when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings." *Id*. (further citation and quotation omitted).

Specifically, defendant's great weight challenge is premised on the disparity between the description of his height and his facial hair by the victims in comparison to his actual physical characteristics. Additionally, defendant contends that the old photograph shown to the victims was inconsistent with his current appearance such that the identification by the victims contradicted indisputable physical facts, thereby warranting a new trial consistent with *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). Defendant also notes the lack of clothing evidence found at his residence following the execution of a search warrant and the fact that a police canine tracked a scent following the robbery to a residence other than his own as evidence providing the basis for a new trial.

In a criminal prosecution, the identity of the defendant is an essential element of every crime. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976). "Unsupported eyewitness testimony, if believed by the trier of fact, is sufficient to convict." *People v Richards*, 76 Mich App 695, 698; 256 NW2d 793 (1977); see also *People v Newby*, 66 Mich App 400, 405; 239 NW2d 387 (1976). The credibility of identification testimony presents a question of fact for the jury. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). This Court does not resolve credibility determinations anew. *Id*. Circumstantial evidence and reasonable inferences arising from the evidence may be sufficient to prove the elements of the crime. *People v Gayheart*, 285 Mich App 202, 216; 776 NW2d 330 (2009).

In the present case, a review of the trial reveals that defense counsel thoroughly questioned the veracity of the identification by the victims in light of the limited duration of the contact, defendant's attempt to conceal his face, the disparity between the photographic identification and defendant's current physical appearance, and the pharmacy technician's delayed reporting of defendant as a pharmacy customer. These discrepancies were raised by the

defense and presented a matter for the jury to resolve, and we will not resolve this determination anew. *Davis*, 241 Mich App at 700. Moreover, the prosecutor presented circumstantial evidence that defendant had "issues" with Vicodin, recently disposed of his supply to appease his girlfriend, and a police canine tracked the Vicodin robber to the vicinity of defendant's residence. *Gayheart*, 285 Mich App at 216. In light of the circumstantial evidence and the jury's resolution of the identification testimony, defendant failed to demonstrate plain error affecting substantial rights, *Pipes*, 475 Mich at 279, and therefore, he is not entitled to appellate relief.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Patrick M. Meter
/s/ Christopher M. Murray