

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EUSEAN CARRAOUL-LAHTIF JENNINGS,

Defendant-Appellant.

UNPUBLISHED

September 13, 2012

No. 307331

Berrien Circuit Court

LC No. 2011-001568-FC

Before: WILDER, P.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

A jury convicted defendant of assault with a dangerous weapon, MCL 750.82; domestic assault, third offense, MCL 750.81(4); and two counts of 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 two years' imprisonment on each of the two felony-firearm convictions to be served concurrently to each other and consecutively to concurrent terms of 42 to 180 months' imprisonment for the domestic assault conviction, and 42 to 180 months' imprisonment for the assault with a dangerous weapon conviction. Defendant appeals as of right. We affirm.

I. BASIC FACTS

Defendant and the victim, Champagne McKinney, were previously romantically involved and had a three-year-old son, Kobe. In early 2011, McKinney went to jail on unrelated charges and left Kobe in the care of his godmother. While in the godmother's care, Kobe suffered third-degree burns on his buttocks, although it is unclear from the record how the burns occurred. A few months later, on April 17, 2011, McKinney was attacked in front of her house shortly after 3:00 a.m. On the night of the attack, McKinney had just arrived home from a night out with friends, during which she had run into defendant at a local bar.

McKinney testified that as she was walking to her door after being dropped off by a friend, she heard a rustling of clothing behind her and turned to see the attacker. The attacker "looked like [defendant]," but his face was partially obscured by the hood of a gray hooded sweatshirt. The attacker said, "What did you do to Kobe?" before he hit McKinney and dragged her away from the door and into the lawn. McKinney responded that she would never hurt her son. The attacker stood over McKinney pointing a gun down at her, repeatedly saying, "You hurt him because you don't like me." The attacker then fired his gun three times into the ground a few feet from McKinney's head. As he walked away he said, "That was for Kobe."

McKinney spoke with a 9-1-1 operator immediately after her attack and identified defendant by name. She also identified defendant by name to both the responding patrol officer and the responding detective. McKinney also unequivocally identified defendant as her attacker at the preliminary hearing. However, at trial, McKinney's testimony was somewhat more equivocal. At trial, when asked if she recognized the voice of the attacker, McKinney responded that it was defendant's voice but later in her testimony said that it "sound [sic] like [defendant]." Shortly after that, she said she had a "very small" amount of doubt that it was defendant who attacked her. When asked if she actually saw the attacker, McKinney said that the attacker's face was partially obscured by a hooded sweatshirt and she kept "opening and shutting [her] eyes" because she was scared when she saw that he had a gun. When pressed further, she said that the glimpse she did get of the attacker "look [sic] like [defendant]." McKinney confirmed that she had unequivocally identified defendant as her attacker at the preliminary hearing and to the 9-1-1 operator. Finally, the prosecution asked her to characterize her uncertainty and she said she had a "very small doubt," brought on by what other people had told her.

The jury convicted defendant of assault with a dangerous weapon, domestic assault, and two counts of possession of a firearm during the commission of a felony. He was sentenced as outlined above. Defendant now appeals as of right.

II. ANALYSIS

On appeal, defendant argues that that there was insufficient evidence to support his conviction where McKinney equivocated as to the identity of her attacker. We disagree.

This Court reviews *de novo* sufficiency-of-the-evidence appeals and "reviews the evidence in the light most favorable to the prosecution." *People v Harverson*, 291 Mich App 171, 175; 804 NW2d 757 (2010). The prosecution must introduce sufficient evidence for a rational trier of fact to find that the essential elements of the crime were proven beyond a reasonable doubt, including identity, which can be achieved with the use of circumstantial evidence and the reasonable inferences arising therefrom. *Harverson*, 291 Mich App 175; *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967). The jury is the sole judge of the facts and decides the credibility of witnesses. *People v Hardiman*, 466 Mich 417, 431; 646 NW2d 158 (2002). It may reject or credit any or all of a witness's testimony. *Id.*

In this case, McKinney testified that her attacker looked like defendant, had defendant's voice, and made statements about their minor child during the attack. Despite her minor equivocation, the jury believed that defendant attacked McKinney. McKinney's account of the attack provided sufficient direct and circumstantial evidence to support this conclusion. Accordingly, we conclude that, viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence to prove beyond a reasonable doubt that defendant was the man who attacked the victim.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly