

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRUCE KENT BROWN,

Defendant-Appellant.

UNPUBLISHED

January 29, 2009

No. 280721

Ingham Circuit Court

LC No. 07-000045-FC

Before: Owens, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Defendant appeals by right following his jury trial conviction of first-degree felony murder, MCL 750.316(1)(b), armed robbery, MCL 750.529, conspiracy to commit armed robbery, MCL 750.157a, first-degree home invasion, MCL 750.110a(2), and felony firearm, MCL 750.227b. But, due to double jeopardy concerns, the parties stipulated defendant's convictions for first-degree home invasion and armed robbery be vacated.¹ We affirm.

Defendant first argues that there was insufficient evidence to uphold his convictions. Specifically, defendant argues that the prosecution failed to prove that defendant was the person who committed these crimes. We disagree. We review de novo a challenge to the sufficiency of the evidence in a criminal case, viewing the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find beyond a reasonable doubt that all essential elements of the prosecution's case were proven. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). We draw all reasonable inferences and resolve credibility issues in favor of the jury verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Identity is an essential element of every crime. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976). The prosecution must present sufficient evidence that proves beyond a reasonable doubt that the accused committed the crimes alleged. *People v Kern*, 6 Mich App 406, 409; 149 NW2d 216 (1967). "Identity may be shown by either direct testimony or

¹ We note that in *People v Ream*, 481 Mich 223; 750 NW2d 536 (2008) our Supreme Court overruled *People v Wilder*, 411 Mich 328; 308 NW2d 112 (1981), holding that "convicting and sentencing a defendant for both felony murder and the predicate felony does not necessarily violate the 'multiple punishments' strand of the Double Jeopardy Clause." *Ream*, *supra* at 225.

circumstantial evidence which gives the jury an abiding conviction to a moral certainty that the accused was the perpetrator of the offense.” *Id.* at 409-410.

In this case, the prosecution presented sufficient evidence upon which a rational trier of fact could conclude beyond a reasonable doubt that defendant was guilty of all crimes charged either as a principal or an aider and abettor. The prosecution presented direct evidence which placed defendant and his accomplice at decedent’s apartment complex when the crimes were committed. There was also direct evidence that defendant possessed a nine-millimeter gun and his accomplice possessed a .22 caliber long pistol. Decedent was shot with a .22 caliber gun. One witness testified that defendant’s accomplice admitted he had shot decedent with his gun. Additionally, another witness testified that when she accused defendant of killing decedent, he said, “I know.” The prosecution also presented strong circumstantial evidence that defendant and his accomplice broke into decedent’s apartment. Both defendant and his accomplice matched the description the surviving victim gave of the men that robbed her and shot the victim who died. There was evidence that defendant’s accomplice was seen carrying some of the items the victim said were stolen from her and the decedent’s home.

Lastly, defendant argues that the trial court abused its discretion when it admitted into evidence a hearsay statement over defense objection. We disagree.

We review the trial court’s decision to admit evidence for an abuse of discretion. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002). But, “when the admission of evidence involves a preliminary question of law, such as whether a . . . rule of evidence precludes the admissibility of evidence, the issue is reviewed de novo.” *People v Washington*, 468 Mich 667, 670-671; 664 NW2d 203 (2003).

Under the Michigan Rules of Evidence hearsay is not admissible unless it falls within one of the recognized exceptions or exclusions set forth in MRE 802. Hearsay is defined as “a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” MRE 801(c).

It is apparent that the trial court admitted the hearsay at issue pursuant to MRE 801(d)(2)(E), which provides that statements made “by a coconspirator of a party during the course and in furtherance of the conspiracy on independent proof of the conspiracy” are not hearsay. Defendant argues that this was error because the prosecution failed to produce independent evidence that defendant entered into an agreement with Santee Franklin, the alleged co-conspirator, to commit a crime.

A party claiming a statement is admissible under this exclusion must establish three things. “First, the proponent must establish by a preponderance of the evidence that a conspiracy existed through independent evidence.” *People v Martin*, 271 Mich App 280, 316-317; 721 NW2d 815 (2006). Second, the proponent of the statement must establish that it “was made during the course of the conspiracy.” *Id.* at 317. “Third, the proponent must establish that the statement furthered the conspiracy.” *Id.*

Here, before the admission of the hearsay, the prosecution presented strong circumstantial evidence that defendant and Franklin were involved in a conspiracy. Decedent had moved to his new apartment only two weeks before the date of the incident. Relatively few

people knew where decedent had moved, but Franklin was one of those people. Further, defendant and Franklin were seen having a discussion on the night of the incident. Afterwards, defendant was able to give directions to decedent's apartment complex. Defendant matched the description of one of the men who broke into decedent's apartment. There was also evidence that defendant's accomplice matched the description of the other man who broke into decedent's apartment and was seen carrying some of the items stolen from decedent's apartment. Among these items was a broken DVD player in which decedent kept money. There was testimony that Franklin was one of the few people who knew that decedent kept money in the broken DVD player. From this evidence, a reasonable inference could be made that defendant conspired with Franklin to rob decedent. Therefore, the trial court did not abuse its discretion in admitting the testimony at issue under MRE 801(d)(2)(E).

We affirm.

/s/ Donald S. Owens

/s/ David H. Sawyer

/s/ Jane E. Markey