

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

ROBERT LEE EVANS,

Defendant-Appellant.

UNPUBLISHED
September 1, 2009

No. 286069
Wayne Circuit Court
LC No. 08-000567-FH

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of arson of a dwelling house, MCL 750.72, assault with a dangerous weapon (felonious assault), MCL 750.82, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant appeals as of right and we affirm.¹

Defendant's sole argument on appeal is that there is insufficient evidence to support his convictions; specifically, defendant argues that the evidence was insufficient to show that he was the perpetrator of these offenses. We disagree. This Court reviews sufficiency of the evidence claims de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). In doing so, we review the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Further, we must resolve any conflicts in the evidence in favor of the prosecution. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

To prove guilt beyond a reasonable doubt, the prosecutor must identify the accused as the person who committed the alleged offense. *People v Kern*, 6 Mich App 406, 409; 149 NW2d 216 (1967). Identity may be established through either direct testimony or circumstantial evidence. *Id.* at 409-410.

¹ This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Here, the victim testified that defendant returned to her house following a fight with her friend and approached her porch holding a shotgun. She indicated that defendant stood at the bottom of the six-step stoop leading to her porch, pointed the gun at her, and fired. The victim's neighbors both similarly testified that they saw defendant shoot at the front door of the victim's house from the bottom of the stoop and that the victim was sitting on the front porch at the time. The victim testified that she was hit in the face with debris and then fled her house through the back door, locking the front door on her way. Defendant then broke into the house and, according to the victim's neighbors, flicked a lighter and set the victim's dining room couch on fire. Lieutenant Davidson also testified that he believed the couch was set on fire by a direct flame contact. Taking this testimony in the light most favorable to the prosecution, there was sufficient evidence to prove beyond a reasonable doubt that defendant was the perpetrator of arson of a dwelling house and felonious assault. In addition, the parties stipulated that defendant had a prior felony conviction. Because there was sufficient evidence to prove that it was defendant who possessed the gun to support his felonious assault conviction, there was also sufficient evidence to support his felon in possession of a firearm and felony-firearm convictions. Accordingly, we conclude that the prosecution sufficiently proved that defendant committed the subject offenses.

Defendant, however, questions the credibility of the victim, her neighbors, and Lieutenant Davidson, suggesting that his testimony was more believable. This argument is unavailing. It is not the function of the appellate courts to determine the weight of the evidence or the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992). Rather, this role belongs to the trier of fact, who has the special opportunity to see and hear witnesses, and is thus in a better position to weigh the evidence and determine credibility. *People v Palmer*, 392 Mich 370, 375-376; 220 NW2d 393 (1974). Accordingly, we must defer to the jury's credibility determinations and resolve all conflicts in the evidence in favor of the prosecution. *Kanaan, supra* at 619.

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro