

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
July 19, 2011

v

SPENCER GRADY-RONNELL WILLIAMS,  
Defendant-Appellant.

No. 297732  
Wayne Circuit Court  
LC No. 09-029211-FC

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Before: MURRAY, P.J., and FITZGERALD and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of assault with intent to murder, MCL 750.83, 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 was sentenced as a fourth habitual offender, MCL 769.12, to 18 to 30 years' imprisonment for the assault with intent to murder conviction, 18 to 30 years' imprisonment for the felon in possession of a firearm conviction, and two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant first argues that there was insufficient evidence to support his conviction of assault with intent to murder. We disagree.

This Court reviews de novo a challenge to the sufficiency of the evidence in a bench trial. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). The evidence is viewed in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* Additionally, "regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). A conviction of assault with intent to murder requires proof of the following: "(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005) (internal quotations and citations omitted).

Defendant first claims that the evidence of his identity as the shooter was not proven beyond a reasonable doubt. He specifically challenges Damon Moore's identification of defendant as the shooter and Moore's credibility as a witness. Identity is an essential element in every criminal prosecution. *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008), citing *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976). The prosecution must present sufficient evidence to prove beyond a reasonable doubt the identity of the defendant as

the perpetrator of the charged offense. *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967). Positive identification by a witness may be sufficient to support a conviction of a crime. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Further, “[t]he credibility of identification testimony is a question for the trier of fact that we do not resolve anew.” *Id.*

Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence that defendant was the perpetrator of the charged offense. Moore testified that he knew defendant for some 15 years, and the two men were like brothers. He asserted that, on October 4, 2009, he saw defendant holding a gun, and defendant subsequently pointed the gun at him. Defendant was approximately six feet from Moore. Moore testified that defendant then shot him three times in the leg. Defendant then attempted to shoot Moore a fourth time, in the chest, but the gun malfunctioned. On cross-examination, Moore emphasized that he was positive that defendant was the person that pulled the trigger and shot him. Moore’s unwavering testimony that defendant was the person who shot him was clear and positive. Moore’s testimony, alone, is sufficient evidence to establish defendant’s identification as the perpetrator of the crime. *Davis*, 241 Mich App at 700.

In light of defendant’s testimony and argument that he was not present at the time of the shooting, defendant challenges the credibility of Moore’s testimony. The question whether defendant was present and the perpetrator of the charged offense was entirely dependent on resolution of the conflicting testimony offered by Moore and defendant at trial. This resolution was wholly within the province of the trier of fact, which plainly found Moore’s testimony more credible than defendant’s testimony. Absent clear error, which we do not find, this Court will not interfere with the trier of fact’s role in determining the credibility of the witnesses or the weight of the evidence. See *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005). Moore’s testimony was sufficient to identify defendant as the shooter beyond a reasonable doubt.

Second, defendant disputes the sufficiency of the evidence supporting the *mens rea* element of the offense that he possessed the intent to kill Moore. “Because of the difficulty of proving an actor’s state of mind, minimal circumstantial evidence is sufficient to establish a defendant’s intent to kill.” *People v Unger (On Remand)*, 278 Mich App 210, 223; 749 NW2d 272 (2008). That is, circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of assault with intent to commit murder. *People v Warren*, 200 Mich App 586, 588; 504 NW2d 907 (1993).

The evidence adequately established that defendant assaulted Moore with the requisite intent to commit murder. Moore testified that defendant walked over to defendant’s vehicle and retrieved a gun. Defendant stood in front of Moore, approximately six feet away, and pointed the gun at Moore. Defendant then fired the gun, shooting Moore in the right thigh. Moore collapsed to the ground. Moore testified that defendant then walked closer to Moore and began pacing back and forth, grumbling, “I’m gonna [sic] start killing mother fucker, mother fucker gonna [sic] stop disrespecting me.” According to Moore, defendant shot him again in his right calf. Defendant continued to pace back and forth and continued to mutter that he was going to kill Moore for disrespecting him. Defendant then shot Moore a third time in the same leg. Moore testified that defendant raised the gun and pointed it at his chest. Defendant then uttered,

“it’s time for mother fuckers to die,” and pulled the trigger. However, the gun malfunctioned and did not discharge a fourth time.

The testimony that defendant employed a dangerous weapon like a gun to fire multiple gunshots at Moore from close proximity, and then approached Moore to fire an additional shot to his chest as he lay on the ground, gives rise to a reasonable inference that defendant intended to kill Moore. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996) (affirming the defendant’s assault with intent to murder conviction on the basis of testimony that the defendant “pointed a pistol at [the victim], warned him not to come any closer or he would kill him, and pulled the trigger several times (but no bullets fired)”). Further, defendant’s statement, that “it’s time for mother fuckers to die,” followed by defendant’s attempt to discharge the gun also gives rise to a reasonable inference that defendant intended to kill Moore. Thus, the evidence amply supported the trial court’s determination beyond a reasonable doubt that defendant assaulted Moore with the intent to murder him.

Defendant next argues that he is entitled to a new trial based on newly discovered evidence. We disagree. Defendant failed to preserve this issue by moving for a new trial in the trial court, therefore, this Court reviews this unpreserved issue for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999); *People v Brown*, 279 Mich App 116, 134; 755 NW2d 664 (2008).

A new trial may be granted on the basis of newly discovered evidence if a defendant shows that: “(1) the evidence itself, not merely its materiality, was newly discovered; (2) the newly discovered evidence was not cumulative; (3) the party could not, using reasonable diligence, have discovered and produced the evidence at trial; and (4) the new evidence makes a different result probable on retrial.” *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003) (citations and quotation marks omitted). “However, where newly discovered evidence takes the form of recantation testimony, it is traditionally regarded as suspect and untrustworthy.” *People v Canter*, 197 Mich App 550, 559; 496 NW2d 336 (1992). As a result, courts are reluctant to grant new trials based on recanting testimony. *Id.* Additionally, newly discovered evidence is not a ground for a new trial where it would merely be used for impeachment purposes, *People v Davis*, 199 Mich App 502, 516; 503 NW2d 457 (1993), and conflicting testimony or a question regarding the credibility of a witness are not sufficient grounds for granting a new trial, *People v Lemmon*, 456 Mich 625, 634-635; 576 NW2d 129 (1998).

The newly discovered evidence presented by defendant in this case consists of a purported jailhouse telephone conversation between Moore and defendant. In the conversation, Moore told defendant that defendant had not intentionally shot Moore because defendant was not looking at Moore at the time defendant discharged the gun. Moore’s subsequent statements do not establish that defendant is entitled to a new trial. Moore’s statements, in the alleged jailhouse telephone conversation, are a partial recantation of his trial testimony and are inherently suspect and untrustworthy for three reasons. First, in light of the evidence at trial, Moore’s statements create an incredible picture of the shooting. It is not plausible that defendant discharged a gun multiple times towards the ground, while pacing back and forth and without looking at where he was shooting, and coincidentally shot Moore three times in the same leg. Second, Moore’s alleged statements fail to explain defendant’s statements during the incident regarding killing somebody. Third, the supposition that all three shots to Moore’s leg were accidental does not explain why

defendant then took Moore's vehicle and left him behind bleeding profusely. It defies sense to suppose that defendant failed to notice Moore's wounds; otherwise, defendant would have had no reason to flee the scene of what was supposedly an accident rather than take Moore to a hospital.

In addition to being simply incredible, Moore's purported statements do not suggest a different result at trial, and the fact that his purported jailhouse statements impeach part of his testimony is insufficient. In sum, the record does not show that Moore's purported statements would make a different result probable on retrial, so defendant has failed to establish plain error affecting his substantial rights.

Defendant has also filed a Standard 4 brief, see Michigan Supreme Court Administrative Order 2004-06, Standard 4, in which he raises several additional arguments.<sup>1</sup> However, defendant fails to assert any of the arguments in his statement of the questions presented; therefore, we hold that defendant has abandoned these issues. *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000); MCR 7.212(C)(5). Defendant also fails to provide any meaningful analysis, citation to the record, or authority to support his arguments; consequently, these claims are abandoned. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

Affirmed.

/s/ Christopher M. Murray

/s/ E. Thomas Fitzgerald

/s/ Amy Ronayne Krause

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<sup>1</sup> In his Standard 4 brief, defendant also argues that there was insufficient evidence and that he is entitled to a new trial based on newly discovered evidence, however, we have discussed these issues *supra* and find his claims lack merit.