

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
February 14, 2012

v

JAMES ANDERSON PROCHE,
Defendant-Appellant.

No. 299203
Wayne Circuit Court
LC No. 03-013373-FC

Before: WILDER, P.J., and CAVANAGH and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of armed robbery, MCL 750.529, 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 second habitual offender, MCL 769.10, to 14 to 25 years for the armed robbery conviction, two to five years for the felon in possession of a firearm conviction, and two years for the felony-firearm conviction. We affirm.

On November 14, 2003, in Detroit, Michigan, at approximately 9:09 p.m., while unloading groceries at her residence, Jennifer Tedder was approached by a masked man wearing a yellow jacket. The man pointed a handgun toward Jennifer's face and mumbled the word "holdup." Jennifer quickly threw him her purse. David Tedder, Jennifer's husband, noticing a shadow, turned to face the direction of his wife, and witnessed the exchange. After catching the purse, the man started running down the driveway. After an unsuccessful attempt to stop him, David followed the man to a set of bushes near their home. The man, later identified by David as defendant, appeared from the bushes and fired a shot at David. Defendant was later apprehended near the Tedder residence shortly thereafter.

Defendant argues that the prosecution failed to present sufficient evidence to prove that defendant committed the crimes of armed robbery, felon in possession of a firearm, and felony-firearm. We disagree. In reviewing an insufficiency of the evidence challenge, this Court reviews the record de novo. *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006), aff'd 482 Mich 851 (2008). This Court will not disturb a conviction, if it is determined, in reviewing the evidence in a light most favorable to the prosecution, that a reasonable trier of fact could have found that the elements of the crime were proved beyond a reasonable doubt. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). In reviewing the record, this Court

is “required to draw all reasonable inferences and make credibility choices in support of the [trier of fact’s] verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Furthermore, if any conflicts should arise, this Court should resolve such conflicts in favor of the prosecution. *Wilkins*, 267 Mich App at 738.

Specifically, defendant argues that the prosecution’s identification evidence is too weak to prove beyond a reasonable doubt that defendant committed the alleged crimes. 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). The positive identification of a defendant by a witness may be sufficient to sustain a conviction. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). This Court defers to the trier of fact’s determination as to the credibility of the identification testimony. *Id.*

At trial, David testified that he witnessed defendant unmasked on two occasions. Specifically, David saw defendant appear from the bushes, hold a handgun and fire a shot directly at him. David saw defendant for the second time when defendant appeared shirtless and told David that he was just robbed. The prosecution provided testimony from Officer O’Neil that defendant was found in bushes in the same vicinity where defendant fired a shot at David. Jennifer, although admittedly not positive, testified that, after the armed robbery, she identified defendant as having the same eyes as the perpetrator when she viewed him in the police vehicle. Defendant, however, argues that this identification of defendant in the police vehicle was “extremely suggestive,” but concedes that the officers did not encourage such identification. Defendant further argues that there is no physical evidence to connect him to the alleged crimes. Most importantly, defendant argues, the investigator’s office destroyed the alleged weapon used in the armed robbery. The court credited Officer O’Neil’s testimony that he located the weapon, along with the yellow jacket, purse, and black headband from the armed robbery, suggesting that it was used during the commission of the offense. David and Jennifer also testified to seeing the perpetrator with a silver handgun, resembling the handgun Officer O’Neil discovered. We find that this constitutes sufficient direct testimony and circumstantial evidence for a reasonable trier of fact to find that defendant committed the aforementioned crimes.

The elements of armed robbery are: (1) assault, and (2) felonious taking of property from the victim’s person or presence (3) while armed with a dangerous weapon. *People v Ford*, 262 Mich App 443, 458; 687 NW2d 119 (2004). Armed robbery is a specific intent crime and it is the prosecution’s burden to show that the defendant intended to permanently deprive the victim of property. *People v Lee*, 243 Mich App 163, 168; 622 NW2d 71 (2000).

There is sufficient evidence for a reasonable trier of fact to find that defendant committed armed robbery. Jennifer testified that the perpetrator, later identified as defendant, pointed a silver handgun at her face and mumbled the word “holdup.” Jennifer threw defendant her purse to “keep from getting hurt.” It would be reasonable to conclude that she was in fear and apprehension of a harmful contact. Once in possession of the purse, defendant ran from the Tedders’s residence. A reasonable trier of fact could find that defendant’s action demonstrates his intent to permanently deprive Jennifer of her property. Lastly, defendant used a handgun, a dangerous weapon, in committing the larceny.

Although defendant testified that he did not rob Jennifer and was himself the victim of a robbery by a masked man wearing a yellow fleece, witness credibility and the weight of the evidence is a question for the trier of fact and any conflict is resolved in favor of the prosecution. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). A reasonable trier of fact could find David and Jennifer to be credible witnesses and find their identification of defendant as the perpetrator to be accurate. David viewed defendant twice without a mask, and Jennifer identified defendant after the robbery. It would be reasonable to conclude that, while in shock, Jennifer could still clearly remember an identifying characteristic, such as defendant's eyes, especially since they stood face to face in bright lighting. Accordingly, we find that there is sufficient identification evidence to support defendant's armed robbery conviction.

Upon reviewing the record, there is also sufficient evidence for a reasonable trier of fact to conclude that defendant is guilty of felon in possession of a firearm. To sustain a conviction for felon in possession of a firearm, the prosecution must prove that: (1) defendant is a convicted felon who is prohibited from possessing a firearm and (2) is in possession of a firearm. *People v Perkins*, 262 Mich App 267, 270-271; 686 NW2d 237 (2004), *aff'd* 473 Mich 626 (2005). The record presents sufficient evidence to support a finding that both elements were proved beyond a reasonable doubt. The parties stipulated that defendant, as a convicted felon, was ineligible to possess a firearm. Jennifer identified defendant as the perpetrator who possessed a handgun during the armed robbery. Moreover, the record shows that David viewed defendant, unmasked, holding a handgun prior to firing a shot at David. Although defendant correctly states that there is no physical evidence to connect him to the handgun, a reasonable trier of fact could conclude that based on the testimonial evidence, defendant was in possession of a firearm. In viewing this evidence in a light most favorable to the prosecution, defendant's felon in possession of a firearm conviction must stand.

Lastly, there is sufficient evidence for a reasonable trier of fact to conclude that defendant is guilty of felony-firearm. The elements of felony firearm are: (1) that defendant carries or has in his possession a firearm, (2) during the attempt or commission of a felony. *People v Burgenmeyer*, 461 Mich 431, 436; 606 NW2d 645 (2000). Actual or constructive possession can be proved by direct or circumstantial evidence. *Id.* at 437. The record weighs in favor of the trier of fact's conclusion that defendant is guilty of felony-firearm. As discussed above, there was sufficient evidence for the trier of fact to find that defendant committed armed robbery. As such, this satisfies the first element of felony-firearm. Both David and Jennifer testified that defendant carried a firearm during the commission of the robbery and David saw defendant with a firearm shortly after the robbery. Furthermore, Officer O'Neil found a weapon, along with the yellow jacket, purse, and mask, which David identified as the handgun defendant possessed, near the Tedder residence. Therefore, this Court finds that the record supports defendant's felony-firearm conviction.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio