STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 13, 2011
v	No. 299344 Ionia Circuit Court
MATTHEW BLAKE FERGUSON, Defendant-Appellant.	LC No. 2010-014711-FC

Before: MARKEY, P.J., and SERVITTO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right from his jury convictions of unarmed robbery, MCL 750.530, first-degree home invasion, MCL 750.110a(2), resisting or obstructing a police officer, MCL 750.81d(1), and wearing a mask while committing a crime, MCL 750.396. Defendant was sentenced to concurrent prison terms of four and one-half to 15 years for unarmed robbery and seven and one-half to 20 years for first-degree home invasion, and to concurrent jail sentences of 365 days for resisting or obstructing a police officer, and 90 days for wearing a mask while committing a crime. We affirm.

This matter arises out of an early-morning home invasion and robbery committed by two masked individuals who kicked in the door of a residence and demanded money and drugs. According to the principal complainant, during the ensuing physical struggle, he unmasked one of the robbers and recognized that person as defendant, a person he had known for many years. It appears that defendant was a drug dealer in the area and the complainant had been a drug dealer in the area. The complainant denied still being a drug dealer, but defendant indicated that the complainant was one of his competitors. The complainant identified "Matt" by name. This was confirmed by complainant's then-girlfriend, who was also present with their child. The robbers left shortly after the complainant made this identification. Defendant denied any involvement.

Police officers devised a plan to arrest defendant. The plan involved defendant meeting an acquaintance in an alley for an exchange of a cell phone for money. An officer saw defendant appear in the alley, and drove toward defendant. While getting out of an unmarked car, the officer revealed his badge and yelled "police officer". Defendant ran, and the officer chased him and continued to yell "police officer". After about 100 yards, defendant stopped and was placed under arrest without further incident. Defendant contended that he had accepted a cell phone as

collateral for a drug transaction earlier and that he understood the meeting in the alley to be for the purpose of returning the phone. Defendant also contended that he did not initially realize that the officer was a police officer.

At trial defendant raised a possible alibi related to a person he identified as "John". However, defendant repeatedly refused to fully identify John. Notwithstanding the seriousness of the charges against him, and despite the prosecutor offering to "go pick him up right now and we can bring him in here and he can tell us whether you were with him or not and it saves your hide," defendant explained that identifying John "could be a very, very, very dangerous thing to do in my line of work." Defendant contends that, during closing arguments, the prosecutor impermissibly shifted the burden of proof by arguing that defendant had the burden of producing evidence to prove his innocence. We disagree.

Claims of prosecutorial misconduct are examined on a case-by-case basis. *People v Mann*, 288 Mich App 114, 119; 792 NW2d 53 (2010). Specific comments by the prosecutor must be considered as a whole in light of all the facts, including the defense arguments. *People v Brown*, 279 Mich App 116, 135; 755 NW2d 664 (2008). A fundamental part of the criminal trial and of justice is that the defendant is presumed innocent, and the prosecutor always carries the burden of proving that the defendant is guilty. *People v Rosales*, 160 Mich App 304, 312; 408 NW2d 140 (1986). However, the prosecutor is permitted to discuss weaknesses in a defendant's case, such as a failure to provide corroborating evidence or witnesses after advancing an alibi defense or other alternative theory. *People v Fields*, 450 Mich 94, 112; 538 NW2d 356 (1995); *People v Jackson*, 108 Mich App 346, 351-352; 310 NW2d 238 (1981). Here, the prosecutor made a fair comment on the lack of evidence supporting defendant's theory of the case, particularly in light of the fact that defendant presented to the jury a plausible reason for refusing to identify "John." Furthermore, the trial court instructed the jury that the prosecutor had the burden of proof. It is presumed that jurors follow the instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

Next, defendant challenges the sufficiency of evidence presented on the charge of resisting or obstructing an officer. We review questions of sufficiency of the evidence de novo, in a light most favorable to the prosecution, to determine whether a rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010). We find the evidence sufficient.

The evidence in this case was simply a credibility contest. It is not disputed that the police officer was driving an unmarked police car and wore a coat covering his uniform. Nevertheless, he testified that he pulled the coat back to reveal his badge and yelled to defendant that he was a police officer while making eye contact with defendant. He also testified that he continued to yell that he was a police officer while he chased defendant. In contrast, defendant testified that he did not see or hear any indication that the man was a police officer, only that he was pointing at him from a car and yelling something unintelligible as he gave chase. Defendant testified that he stopped as soon as he realized the man was a police officer. It is not disputed that defendant was cooperative after he stopped running.

The jury determines the credibility of each witness and what weight to give that testimony, and the reviewing court should not disrupt that role. *People v Wolfe*, 440 Mich 508,

514: 489 NW2d 748, amended 441 Mich 1201 (1992). The jury was not obligated to believe defendant or the police officer, and it was free to decide to believe one and not the other. The jury was, therefore, entitled to conclude that the officer's testimony was credible, and defendant's was not. When viewed in that light, the officer's testimony that he identified himself as a police officer and revealed his badge to defendant while maintaining eye contact was sufficient to create a reasonable inference that defendant knew the person chasing him was a police officer. See *People v Kanaan*, 278 Mich App 594, 619, 622; 751 NW2d 57 (2008). Consequently, the evidence supports a conclusion that defendant knowingly resisted a police officer. MCL 750.81d(1); *People v Cross*, 202 Mich App 138, 147; 508 NW2d 144 (1993). Defendant's conviction was supported by sufficient evidence.

Affirmed.

/s/ Jane E. Markey
/s/ Deborah A. Servitto
/s/ Amy Ronayne Krause