STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 20, 2011
v	No. 299496 Oakland Circuit Court
CARLOS JUNIOR BROWN, Defendant-Appellant.	LC No. 2010-230982-FC

Before: OWENS, P.J., and JANSEN and O'CONNELL, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529; felon in possession of a firearm, MCL 750.224f; and two counts of possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant as a second habitual offender, MCL 769.10, to 12 to 40 years' imprisonment on the armed robbery conviction and 3 to 7 ½ years on the felon in possession conviction, to be served consecutively to two years in prison on the felony-firearm convictions. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred by refusing to give the missing-witness instruction, CJI2d 5.12. We review the trial court's decision regarding whether the instruction applied to the facts of the case for abuse of discretion. *People v Dupree*, 486 Mich 693, 702; 788 NW2d 399 (2010). CJI2d 5.12 is appropriate when the prosecution fails to provide the assistance required by MCL 767.40a to locate and serve process upon a witness. See *People v Perez*, 469 Mich 415, 420; 670 NW2d 655 (2003).

Before trial, defendant requested assistance from the prosecutor in locating two res gestae witnesses. The prosecutor responded by issuing subpoenas for the two witnesses. An officer then conducted an investigation to locate the witnesses. At trial, the trial court asked the officer about the efforts he made to locate the witnesses. The officer indicated that he had no current address information for either witness. Regarding the first witness, the officer stated that he went to the home of the witness's mother, who indicated that the witness sometimes came by her home. The officer left a subpoena with the witness's mother and gave her telephone numbers to contact the police or the prosecutor if the witness received the subpoena. Regarding the other witness, the officer stated that he attempted to locate the witness and called the area hospitals and jails.

Having inquired about the efforts made to locate the witnesses, the trial court was within its discretion in refusing to give CJI2d 5.12. The court logically determined that the prosecution complied with the reasonable assistance requirement in MCL 767.40a(5). The requirement can be satisfied through phone calls and visits to a witness's last known address and place of employment. *People v Long*, 246 Mich App 582, 586; 633 NW2d 843 (2001); see also *People v Snider*, 239 Mich App 393, 405; 608 NW2d 502 (2000) (reasonable assistance was provided by doing a background check and contacting the witness's relatives).

Defendant next asserts that the evidence presented at trial was insufficient for a jury to find him guilty of armed robbery beyond a reasonable doubt. This Court reviews the record to determine whether a rational trier of fact could have found that the prosecutor proved the elements of the charged crime. *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010). The complainant's testimony can be sufficient to establish the elements of the crime. See *People v Taylor*, 185 Mich App 1, 8; 460 NW2d 582 (1990). Moreover, juries are in the best position to decide the weight and credibility of testimony given during trial, and this Court will not overturn a jury's decision regarding witness credibility. *People v Palmer*, 392 Mich 370, 376; 220 NW2d 393 (1974).

Here, the record contains sufficient evidence for the jury to have found defendant guilty of the charged crimes. The elements of armed robbery are: "(1) an assault and (2) a felonious taking of property from the victim's presence or person (3) while the defendant is armed with a weapon." *People v Smith*, 478 Mich 292, 319; 733 NW2d 351 (2007); see also MCL 750.529. The complainant testified that she was parked in a store parking lot when defendant approached her and demanded that she "run her pockets," which she knew meant to give him everything in her pockets. The complainant further testified that defendant fired shots into the backseat of her car. A police officer testified that on the night of the incident, he tracked footprints in the snow from the store parking lot to defendant's mother's home. The officer also testified that he found defendant at the home, and that defendant's shoes were wet. The officer further testified that the tread pattern on defendant's shoes was visible in the footprints that the officer had seen in the snow. This evidence was sufficient to establish the elements of armed robbery and of the firearm charges.

Defendant's last contention is that the trial court incorrectly assessed 10 points against defendant for offense variable 19 ("OV 19"), MCL 777.49c (interference with administration of justice). We review the trial court's scoring decision for an abuse of discretion. *People v Steele*, 283 Mich App 472; 490; 769 NW2d 256 (2009). We will uphold the decision if there is any evidence to support the decision. *Id.*, citing *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006).

The record supports at least one ground for the trial court's scoring decision. OV 19 requires the assessment of 10 points when an offender interferes with or attempts to interfere with the administration of justice. MCL 777.49(c). In *People v Barbee*, 470 Mich 283; 681 NW2d 348 (2004), our Supreme Court determined that MCL 777.49(c) "is plain and unambiguous," and that a trial court may assess points against an offender for interference with law enforcement. *Id.* at 287, 288. Similarly, this Court has held that an offender's efforts to destroy or conceal a weapon used in a crime will support an assessment of 10 points under OV 19. *People v Ericksen*, 288 Mich App 192, 204; 793 NW2d 120 (2010). In this case, two police

officers testified that when defendant was arrested for armed robbery, he questioned how he could be charged with armed robbery when the officers had not found a gun. This evidence gave rise to an inference that defendant had disposed of the gun he used to rob the complainant. Accordingly, the trial court did not abuse its discretion by assessing 10 points for OV 19. Given this conclusion, we need not consider the trial court's alternative ground for assessing OV 19 points.

Affirmed.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Peter D. O'Connell