

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEANDRE JARRELL HOUSTON,

Defendant-Appellant.

UNPUBLISHED
February 14, 2012

No. 299972
Wayne Circuit Court
LC No. 09-028513-FH

Before: SERVITTO, P.J., and TALBOT and K.F. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for discharging a firearm into an occupied building, MCL 750.234b, interfering with a crime report, MCL 750.483a(1)(c), (2)(b), four counts of felonious assault, MCL 750.82, and one count of carrying or possessing a firearm when committing or attempting to commit a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to 28 months to 4 years for discharging a firearm into an occupied building, to 28 months to 10 years for interfering with a crime report, to 28 months to 4 years for each count of felonious assault, and to two years for felony-firearm. We affirm.

I. BASIC FACTS

During the time period relevant to this case, Brenda Ferguson lived at 4458 North Chrysler Drive, Detroit, Michigan. Defendant lived with his mother and siblings at 4454 North Chrysler Drive, down the street from the Fergusons. On July 29, 2009, Brenda reported to the police that she witnessed defendant breaking and entering a motor vehicle. That case against defendant was resolved without a trial in early October, 2009, although Brenda was listed on the investigating officer's case jacket as a witness.

Erica Ferguson, Brenda's daughter, testified that on August 16, 2009, she was standing outside her mother's house when defendant walked by and said, "if it wasn't for them little kids staying up in that house, I would have been shot up in that motherf***** b*****." Omar Ferguson, Brenda's son, testified that in early October 2009, defendant approached Omar at a gas station and asked Omar why Brenda had "snitched" to police. However, the two parted ways on "friendly terms."

On the night of October 28, 2009, Brenda was in her home with Omar, Erica, and Monique, her other daughter. The family was watching television. Around 11:30 p.m., Omar

went upstairs to check on his niece, who was in one of the bedrooms, and to look out of his mother's bedroom window to see if his girlfriend had arrived to pick him up. Brenda's bedroom window is on the back of the house, and the view is well lit from porch lights, street lights, and lights from the juvenile court. While looking out the back window, Omar observed defendant running and carrying an AK-47. He called for his sister, Erica, to come upstairs. Erica testified that when she first noticed defendant he was standing near a tree in the backyard, about three to four feet from the house. Erica and Omar testified that they witnessed defendant, wearing blue shorts and no shirt, open fire on their home. Both Erica and Omar testified that the gun defendant used had a black barrel, wooden stock, and a banana clip. Erica testified that she "actually saw the fire coming from" the barrel of the weapon as it fired, and that defendant looked directly at her as he shot the weapon. She testified that she froze while watching defendant shoot. Omar shouted for everyone in the house to "get down." Two bullets were shot into the bedroom, one above Erica's head, and the other below the window. Brenda testified that, immediately following the shooting, she saw defendant running away carrying a gun, wearing blue shorts and no shirt. Brenda, Omar, Erica, and Monique testified that, shortly after the shooting, they each saw defendant run away from his mother's home towards a car, wearing dark pants and a dark shirt.

A search was conducted at defendant's mother's home, where police officers found an AK-47 hidden between a mattress and a box spring. According to a subsequent forensics laboratory report by the Michigan State Police, the AK-47 recovered from defendant's home was eliminated as having fired the shots into the Ferguson home because bullets recovered from the Ferguson home were .38 caliber and .357 caliber, which is inconsistent with an AK-47.

Defendant denied shooting at the Fergusons' home, and called witnesses to establish his whereabouts on the night of the shooting. Defendant's brother, Jovonne Houston, testified that at about 11:45 p.m. on the night of October 28, 2009, he was walking home from a gas station when he saw two men that he believed were going to kill him in retaliation for a crime they believed he committed. Jovonne testified that he called defendant and told him that the men were going to kill him. According to Jovonne, the men then got out of their car and began shooting at him. Jovonne ran towards his mother's house, with the men chasing and shooting at him. When he reached his mother's house, defendant was there waiting for him in the parking lot, and they went together into the basement. Defendant then called his friend to pick up the nine people who were in the home and drive them to safety. At no point did Jovonne or anyone else call the police to report the shooting. Jovonne testified that the police were not called because they were fearful for their lives, and "just . . . trying to get out of the area."

Ashley Ferguson, defendant's girlfriend (and no relation to the complainants), testified that she was in bed with defendant when Jovonne called to say he feared for his life. She testified that defendant immediately ran outside to meet his brother, and then heard gunshots. The two men came back into the house and everyone went into the basement until a friend came and picked them up. Jovonne dissuaded everyone from calling the police because "they didn't do nothing last time." Annette testified that Jovonne left the home that night, and returned a few minutes later with gun fire following him. Annette never called 911 because she was too hysterical.

The trial court found the prosecution's witnesses believable, and found defendant's witnesses "questionable" because "for there to have been as much gunfire and as much activity going on with many people as it was testified running around in the parking lot, it just sounded like it was a very very frightening situation. This Court is dumbfounded as to why no one in the Defendant's family felt that they needed to call the police." The court found defendant guilty of interfering with a crime report, four counts of felonious assault, discharging a weapon at a dwelling, and felony-firearm. Defendant was sentenced as outlined above. He now appeals as of right, arguing that the evidence was insufficient to support his convictions.

II. STANDARD OF REVIEW

We review sufficiency of the evidence questions de novo, in a light most favorable to the prosecution. *People v Ericksen*, 288 Mich App 192, 195-196; 793 NW2d 120 (2010). We determine whether a rational trier of fact could find that the evidence proved the essential elements of the crime beyond a reasonable doubt. *People v Railer*, 288 Mich App 213, 217; 792 NW2d 776 (2010). Circumstantial evidence and reasonable inferences may be used to prove the elements of the crime. *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010).

We review questions of statutory interpretation de novo. *People v Yamat*, 475 Mich 49, 52; 714 NW2d 335 (2006).

III. ANALYSIS

A. INTENTIONALLY DISCHARGING A WEAPON AT A DWELLING OR OCCUPIED STRUCTURE

Defendant argues that his conviction for intentionally discharging a weapon at a dwelling or occupied structure was not supported by sufficient evidence because the forensic evidence, which indicated that the AK-47 recovered from defendant's mother's home could not have fired into the Fergusons' home, contradicted eyewitness testimony. We disagree.

MCL 750.234b(1) forbids individuals from "intentionally discharg[ing] a firearm at a facility that he or she knows or has reason to believe is a dwelling or occupied structure" Identity of the defendant is an element of every offense. *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008). Positive identification by a witness may be sufficient to support a conviction. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). The credibility of identification witnesses is within the purview of the fact finder, and will not be "resolve[d] anew" on appeal. *Davis*, 241 Mich App at 700.

The prosecution presented sufficient evidence that defendant was the shooter. Omar and Erica testified they knew defendant from the neighborhood and were able to clearly see him as he shot at the house. Both Omar and Erica were able to identify what defendant was wearing: blue shorts and no shirt. At the time of the shooting, lights were on in the home, there were four people in the home, and those occupants were watching television. This testimony, viewed in the light most favorable to the prosecution, was sufficient to establish beyond a reasonable doubt that defendant was the shooter and that he knew or had reason to believe the home was occupied.

Defendant argues that because the weapon recovered from his mother's home was eliminated by the State Police laboratory report as the weapon involved, the prosecution's evidence of identity is insufficient. Defendant argues that because .38 and .357 caliber bullets were recovered from the Fergusons' home, and because the laboratory report indicated that AK-47s cannot fire those caliber bullets, "[t]his is not a matter of weighing competing evidence or resolving conflicts. This is an issue of the witnesses either fabricating what happened or being totally and completely wrong." However, the trial court, as factfinder, specifically found the prosecution's witnesses credible, but did not find defendant's witnesses credible. We will not "resolve anew" the credibility of witnesses in this case. *Davis*, 241 Mich App at 700. That the weapon recovered from defendant's mother's house was not involved in the shooting does not, without more, mean that defendant was not involved in the shooting, and alone is an insufficient reason for this Court to reverse.

We decline, as defendant suggests, to take judicial notice that an AK-47 cannot fire .38 caliber or .357 caliber bullets. The prosecution has already established its burden on the issue of identity, and as taking judicial notice of the caliber ammunition fired by an AK-47 would not change the outcome of this case, we decline to do so.

B. INTERFERING WITH A CRIME REPORT

Defendant next argues that even if this Court accepts that he was the shooter, there was insufficient evidence to support his conviction for interfering with a crime report because, at the time of the shooting, the felony matter for which Brenda reported defendant to police had passed, and with it, any desire to harm the Ferguson family. We disagree.

MCL 750.483a(1)(c) provides, in relevant part, that a person may not "[r]etaliat[e] or attempt to retaliate against another person for having reported or attempted to report a crime committed or attempted by another person. As used in this subsection, 'retaliate' means to do any of the following: (i) Commit or attempt to commit a crime against any person; (ii) Threaten to kill or injure any person or threaten to cause property damage." MCL 750.483a(1)(c) "forbids, generally, interference with a person seeking to report a crime." *People v Holley*, 480 Mich 222, 226; 747 NW2d 856 (2008).

The prosecution presented sufficient evidence to support defendant's conviction for interfering with a crime report. On July 29, 2009, Brenda reported to police that she witnessed defendant involved in a felony separate from this case. Then, on August 16, 2009, defendant walked by Erica, who was standing outside the Ferguson home, and threatened to shoot the house. In early October, 2009, defendant approached Omar at a gas station, and asked him why his mother "snitched." Subsequently, on October 28, 2009, defendant did, in fact, shoot at the Ferguson home. There was sufficient evidence presented for a reasonable jury to conclude that defendant retaliated or attempted to retaliate against Brenda for reporting him to the police.

Defendant also argues that because defendant did not appear to harbor animosity towards Omar in early October, 2009, defendant's desire to retaliate had passed. Similarly, defendant argues that because Erica arguably did not demonstrate fear when he threatened her, his desire to retaliate had passed. Contrary to defendant's argument, it is immaterial to the charge of interfering with a crime report that the felony for which Brenda reported defendant had been

resolved before the shooting. Although MCL 750.483a(3) contains provisions prohibiting influencing police during ongoing investigations, no other provision of the statute draws a nexus between an ongoing police investigation and prohibited conduct. When this Court interprets a statute, “[i]f the language is clear, no further construction is necessary or allowed to expand what the legislature clearly intended to cover.” *People v Koonce*, 466 Mich 515, 518; 648 NW2d 153 (2002). Defendant was convicted of violating MCL 750.483a(1)(c), which does not require an ongoing criminal investigation into a defendant at the time he retaliates or attempts to retaliate. Rather, the statute merely requires a retaliation or attempted retaliation. See *Holley*, 480 Mich at 226. The language of the statute is clear, and this Court accordingly will not expand the statute’s meaning beyond what the legislature intended. *Koonce*, 466 Mich at 518.

Affirmed.

/s/ Deborah A. Servitto
/s/ Michael J. Talbot
/s/ Kirsten Frank Kelly