

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
November 27, 2012

v

AINSLEY ANDERSON PARTRIDGE, III,  
  
Defendant-Appellant.

No. 307248  
Hillsdale Circuit Court  
LC Nos. 11-352537-FH;  
11-352538-FH;  
11-352539-FH

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Before: BORRELLO, P.J., and FITZGERALD and OWENS, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions on two counts of second-degree home invasion, MCL 750.110a(3), and two counts of breaking and entering with intent to commit larceny, MCL 750.110. Defendant was sentenced as a habitual offender, third offense, MCL 769.11 to 14 to 30 years' imprisonment on the home invasion conviction and 8 to 20 years' imprisonment on the breaking and entering conviction. For the reasons set forth in this opinion, we affirm the convictions and sentences of defendant.

In the present case, the defendant argues that there is insufficient evidence to prove beyond a reasonable doubt that he committed the home-invasion and breaking-and-entering charges. A challenge to the sufficiency of the evidence is reviewed de novo on appeal. *People v Wolfe*, 440 Mich 508, 513-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). "The test for determining the sufficiency of evidence in a criminal case is whether the evidence, viewed in a light most favorable to the people, would warrant a reasonable juror in finding guilt beyond a reasonable doubt. . . . The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). The elements of breaking and entering with intent to commit larceny are: (1) the defendant broke into a building, (2) the defendant entered the building, and (3) at the time of the breaking and entering, the defendant intended to commit a larceny therein. *People v Toole*, 227 Mich App 656, 658; 576 NW2d 441 (1998). The offense of second-degree home invasion is defined in MCL 750.110a(3), which provides that:

A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a

person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the second degree.

Additionally, identity is an essential element in a criminal prosecution, *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976), and the prosecution must prove the identity of the defendant as the perpetrator of a charged offense beyond a reasonable doubt. *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 for a crime. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). The credibility of identification testimony is for the trier of fact to resolve and this Court will not resolve it anew. *Id.*

Defendant's sole contention on appeal is that there was insufficient evidence to prove his identity as the perpetrator of the crimes for which he was convicted. The crux of defendant's assertion is that the evidence presented was insufficient to uphold defendant's convictions because the evidence presented merely implicated defendant's accomplice, Hawkins, as the perpetrator. To the extent that defendant relies on the argument that Hawkins' testimony was not credible, we note that "[T]he credibility of witnesses is a matter of weight, not sufficiency." *People v Scotts*, 80 Mich App 1, 9; 263 NW2d 272 (1972); and "[q]uestions of credibility are left to the trier of fact and will not be resolved anew by this Court." *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). However, to the extent defendant argues that the State failed to produce sufficient evidence to sustain his convictions in appeal, we turn to the record.

Our review of the record leads us to conclude that Hawkins testified defendant directed him to drive to three different homes in Hillsdale County over a two week period in January and February of 2011. Hawkins also testified that defendant then broke into these homes – and some associated outbuildings – and took numerous items, which included jewelry and a television. After defendant broke into the homes and structures, he placed the items in the car which Hawkins was driving. Additionally, defendant paid Hawkins around \$50 to drive him to the various locations where items were taken. This evidence alone is sufficient to support defendant's convictions. *Davis*, 241 Mich App at 700. Also, defendant argues that Hawkins provided the testimony in order to obtain leniency for himself. Again, to the extent that defendant is implying that Hawkins was not credible, his argument is meritless because, "the credibility of witnesses is a matter of weight, not sufficiency," that is left to the trier of fact. *Scotts*, 80 Mich App at 9; see also *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998).

Further, additional circumstantial evidence corroborated Hawkins's testimony. First, there was documentary evidence establishing that defendant sold jewelry multiple times in January and February 2011. Also, defendant's girlfriend testified that she found a television in her living room that she suspected to be stolen. At her request, defendant subsequently disposed of the television. Finally, Hawkins testified that he suffered from the lingering effects of a severe back injury that would have made it difficult for him to have broken into the buildings. Consequently, our review of the record evidence presented at trial, when viewed in a light most favorable to the prosecution, leads us to conclude that the evidence presented was sufficient to permit a reasonable jury to conclude beyond a reasonable doubt that defendant was guilty of the crimes for which he was convicted. See *Nowack*, 462 Mich at 399-400.

Affirmed.

/s/ Stephen L. Borrello  
/s/ E. Thomas Fitzgerald  
/s/ Donald S. Owens