

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
March 14, 2013

v

ANTONIO CROMER,

No. 307930  
Wayne Circuit Court  
LC No. 10-010255-FC

Defendant-Appellant.

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Before: GLEICHER, P.J., and SAWYER and FORT HOOD, JJ.

PER CURIAM.

A jury convicted defendant Antonio Cromer of first-degree premeditated murder, MCL 750.316(1)(a),<sup>1</sup> assault with intent to murder, MCL 750.83, armed robbery, MCL 750.529, felon in possession of a firearm, MCL 750.227f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, arising from the fatal shooting of Marquise Flowers and the nonfatal shooting of Samuel Shepherd during a robbery at the home of Janel Banks. Defendant claims that the prosecutor presented insufficient evidence to establish his identity as the shooter because the witnesses were under the influence of controlled substances at the time of the offense, the investigating officers failed to look for fingerprint or DNA evidence, and ballistics testing was not conducted accurately. We may not second-guess the jury's assessment of the witnesses' credibility and the eyewitness identifications standing alone were sufficient to support defendant's convictions. We therefore affirm.

**I. BACKGROUND**

On September 3, 2010, Marquise Flowers was living with his friend Janel Banks. Flowers is described as an "inexperienced" drug dealer who did not carry a firearm and sold marijuana and crack cocaine. Flowers was known to keep his inventory and cash inside his

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<sup>1</sup> As an alternate to premeditated murder, the prosecutor charged defendant with first-degree felony murder. The court instructed the jury on the lesser included offense of second-degree murder, MCL 750.317, and the jury convicted defendant of that offense in lieu of felony murder. As there was only one murder victim in this case, the trial court vacated defendant's second-degree murder conviction to avoid double jeopardy concerns.

socks and shoes. On the day in question, various people came to Banks' home to purchase controlled substances from Flowers and some stayed to use the drugs or to visit.

Defendant came to Banks' home at 7:00 a.m. on the day in question. He purchased crack cocaine and remained in the home for a couple of hours while he smoked it. Defendant returned at 9:00 p.m. and purchased more crack cocaine. According to Banks and her acquaintance Kenneth Crowder, defendant returned again at 11:00 p.m. Defendant entered the back bedroom on the home's first floor where Banks and Crowder were sitting. Defendant and Banks sent Crowder to a local store to make some purchases on their behalves. While Crowder was gone, Banks and defendant continued to talk and smoked crack cocaine. When Crowder returned, the trio smoked crack cocaine together, but defendant kept leaving the room. Banks ultimately asked Crowder to investigate defendant's whereabouts. Crowder found defendant in the home's first-floor front bedroom. Defendant was holding a black and silver handgun.

Crowder returned to the back bedroom and defendant followed. He took Crowder's wallet, but left two \$20 bills for Banks and Crowder and warned them not to leave the room. Defendant then went into the dining room where Flowers and Samuel Shepherd were playing dice. Shepherd had his back to defendant. He heard a shot fired and saw Flowers slump to the ground. Defendant then shot Shepherd in the back of his head. Shepherd fell unconscious to the floor without seeing the person who shot him and Flowers.

Banks and Crowder both identified defendant from photographic lineups. When the officers arrested defendant, he was in his bedroom. The officers found a .380 caliber black and silver handgun under defendant's mattress. The spent shell casings found at Banks' home matched the handgun caliber and appeared similar to casings ejected from the handgun during subsequent testing.

## II. SUFFICIENCY OF THE EVIDENCE

Defendant's single challenge on appeal is that the prosecutor presented insufficient evidence to establish that he was the individual who committed these crimes. Defendant contends that because Banks and Crowder were under the influence of controlled substances at the time, their memories were unreliable. Defendant further notes that Crowder contradicted Banks' testimony regarding their drug use. Defendant challenges the police officer's failure to dust an orange juice bottle that Crowder claims he purchased for defendant to determine if defendant was the actual individual at the scene. Defendant also contends that the police did not adequately connect his handgun to the offense because the officer who compared the spent casings from the crime scene to the spent casings at the laboratory failed to use scientifically proven methods. Yet, the eye witness testimony standing alone was sufficient to support defendant's convictions and we may not interfere with the jury's judgment.

We review de novo challenges to the sufficiency of the evidence. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). We "must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999), citing *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). "Circumstantial evidence and reasonable inferences that arise from the

evidence can constitute sufficient proof of the elements of the crime.” *People v Taylor*, 275 Mich App 177, 179; 737 NW2d 790 (2007), citing *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005). Importantly, “[i]t is a well-settled principle that ‘[i]n reviewing a sufficiency argument, this Court must not interfere with the jury’s role of determining the weight of the evidence or the credibility of witnesses.’” *People v Ortiz*, 249 Mich App 297, 302; 642 NW2d 417 (2001), quoting *People v Stiller*, 242 Mich App 38, 42; 617 NW2d 697 (2000).

Defendant’s major contention on appeal is that the two witnesses who could place him at the scene—Banks and Crowder—were under the influence of crack cocaine at the time and were therefore unreliable. Banks and Crowder both testified that defendant was at the scene with a gun and trapped them in a bedroom moments before they heard gunfire in the house. Banks had spent significant amounts of time with defendant that day as he had come to her home on three separate occasions. Crowder also spent a significant amount of time with defendant when he came to Banks’ house at 11:00 p.m. that night. The jury was well informed of the witnesses’ drug use through Banks’ own testimony, although Crowder denied that he had used illegal substances. Moreover, the court gave the jury the following cautionary instruction:

You should examine the testimony of an addicted witness closely and be very careful about accepting it. You should think about whether the testimony is supported by other evidence, because then it may be more reliable. However, there is nothing wrong with the prosecutor using an addicted witness. You may convict the Defendant based on such witness testimony alone if you believe the testimony and it proves the Defendant’s guilt beyond a reasonable doubt.

When you decide whether to believe the witnesses Kenneth Crowder and Janel Banks, consider the following[:] Did the fact that these witnesses are addicted to drugs affect their memory of events or ability to testify accurately? Does the witnesses’ addiction give them special reasons to testify falsely? Were [sic] the witnesses’ testimony falsely slanted to make the Defendant seem guilty because of the witnesses’ own interest, or to remove suspicion from others or because the witness feared retaliation from others in drug trafficking? Were the witnesses affected by the fear of being jailed and denied access to drugs?

In general, you should consider an addicted witness’ testimony more cautiously than you should that of an ordinary witness. You should be sure you’ve examined it closely before you base a conviction on it.

Ultimately, examining the credibility of the witnesses is the job of the jury alone. *Ortiz*, 249 Mich App at 302. And this Court has held that “positive identification by witnesses may be sufficient to support a conviction of a crime.” *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Furthermore, we must interpret the facts in a light most favorable to the prosecution. *Johnson*, 460 Mich at 723. Reviewing the matter under these restraints, there is no ground for reversal.

As the eyewitness testimony standing alone would be sufficient to support defendant's convictions, we need not consider the effect of the prosecutor's failure to present fingerprint or DNA evidence linking defendant to the scene.<sup>2</sup> Seventeen days after the incident, Banks directed officers to an orange juice bottle in the back bedroom. Defendant had allegedly handled the bottle. The officers seized the bottle but there is no record indication that the authorities analyzed it for fingerprint or DNA evidence. The lack of any physical evidence of this sort is not dispositive, however. See *Taylor*, 275 Mich App at 179 (circumstantial evidence and reasonable inferences therefrom can constitute sufficient evidence); *People v Gunn*, 27 Mich App 86, 88; 183 NW2d 388 (1970) (witness testimony was sufficient to sustain the defendant's conviction of assault with intent to commit armed robbery, even though no physical evidence of weapon was introduced).

Defendant also contends that the evidence was insufficient to link the handgun found underneath his mattress to the handgun used to shoot Flowers and Shepherd. Defendant does not suggest that the evidence was inadmissible because of the analyzing detective's qualifications or under the standards of *Daubert v Merrell Dow Pharmaceuticals, Inc*, 509 US 579; 113 S Ct 2786; 125 L Ed 2d 469 (1993). Rather, defendant simply claims that the analyzing detective could not accurately or adequately link the handgun found underneath his mattress to the crime. Defendant further argues that the detective was an unreliable witness because of his flawed methodology of testing the weapon. It is, however, the jury's role to determine the weight of the evidence and the credibility of witnesses, including expert witnesses. *People v Unger*, 278 Mich App 210, 220; 749 NW2d 272 (2008); *Ortiz*, 249 Mich App at 302. Accordingly, the alleged unreliability of the particular ballistic testing methods does not warrant reversal, especially given the identification testimony of eyewitnesses Banks and Crowder.

Affirmed.

/s/ Elizabeth L. Gleicher  
/s/ David H. Sawyer  
/s/ Karen M. Fort Hood

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<sup>2</sup> Defendant does not assert on appeal any error arising from the prosecution's or law enforcement's failure to analyze this evidence. Defendant also does not suggest that defense counsel was ineffective for failing to request such testing.