

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DELMAREY ROB MITCHELL,

Defendant-Appellant.

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UNPUBLISHED

June 21, 2007

No. 270581

Wayne Circuit Court

LC No. 05-009802-01

Before: Fitzgerald, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of assault with intent to commit murder, MCL 750.83, felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prison terms of 10 to 20 years for the assault with intent to commit murder conviction and 32 to 48 months for the felonious assault conviction, and a consecutive two-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the evidence was insufficient to identify him as the perpetrator of the crimes charged. He contends that the victim’s prior statements and testimony regarding defendant’s involvement were so inherently contradictory and inconsistent that the trial court should have rejected his testimony as incredible. “As a general rule, the trial judge, as trier of fact, has the duty to weigh the testimony and assess the credibility of the witnesses.” *People v Snell*, 118 Mich App 750, 755; 325 NW2d 563 (1982). In this capacity, the trial court “may choose to believe or disbelieve any witness or any evidence presented in reaching a verdict.” *People v Cummings*, 139 Mich App 286, 294; 362 NW2d 252 (1984).

In this case, the complainant testified that defendant first assaulted him with a pistol and accused him of burglarizing defendant’s home. According to complainant, defendant’s brother arrived at defendant’s home later in the day while complainant again passed in front of defendant’s house. Defendant’s brother remained in the car and defendant ran out, armed with the pistol, and told his brother that the complainant had burglarized him. Defendant’s brother drew his own pistol, pointed it at the complainant, and demanded that complainant return the stolen property. When complainant refused, defendant told his brother to shoot complainant. At trial, complainant accused defendant’s brother of shooting him, and that other shots were fired after he turned his back to escape. Forensics testimony confirmed that three shots were fired in

the street, and complainant was shot once in the midsection. Defendant's girlfriend did not dispute that complainant was shot in front of defendant's house, or that it stemmed from an altercation over the identity of the home's burglar. Nor did she testify that defendant was absent during the altercation. Instead, she merely testified that defendant was inside the house and that the shooter was an unrelated and nondescript individual. Defendant's testimony placed defendant on the porch and did not describe anyone related to the shooting.

Although the complainant's original statements were ambiguous about the identity of the individual who pulled the trigger, defendant's argument makes too much of the complainant's initial statements to police. Complainant explained that he blamed defendant for the shooting because it related to defendant's complaints about the burglary. Moreover, the trial court correctly concluded that the identity of the actual triggerman was irrelevant because complainant, in very consistent and credible terms, adequately described defendant's aiding and abetting his brother's actions. Therefore, viewing the evidence in a light most favorable to the prosecution and deferring to the trial court's determination of credibility, the evidence was sufficient to establish defendant's identity as a perpetrator of the crimes charged. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).

Defendant next argues that the trial court violated his right of confrontation by infringing on his right of cross-examination. The record cited does not support defendant's claim. Although the trial court did, at one point, preclude defense counsel from trying to impeach complainant with an incomplete, but consistent, prior statement, it did not preclude defense counsel from challenging complainant's credibility by exposing and emphasizing the fact that complainant was adding new information that he had never provided to the authorities before. Therefore, defendant has failed to establish any factual support for this claim of error.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ David H. Sawyer  
/s/ Peter D. O'Connell