

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CEDRIC CLAYTON,

Defendant-Appellant.

UNPUBLISHED

March 17, 2011

No. 293983

Saginaw Circuit Court

LC No. 08-031525-FC

Before: SHAPIRO, P.J., and HOEKSTRA and TALBOT, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84, and first-degree home invasion MCL 750.110(a)(2). Defendant was sentenced to concurrent prison terms of 10 to 40 years for the assault conviction and 15 to 40 years for the home invasion conviction. He appeals as of right. We affirm defendant's convictions and sentences, but remand for the ministerial correction of his presentence investigation report.

The convictions arise out of an incident in which Lavell Abraham was shot in the abdomen and defendant was shot in the leg. The gunfire exchange occurred at the apartment of Shanairah Cannon, Abraham's date for the evening and allegedly the girlfriend of defendant's brother. According to the testimony of Abraham and Cannon, they were inside the apartment when someone began knocking, then banging on the door. Cannon testified that when she answered the door, three or four men wearing dark clothing, long pants, and masks that covered their faces, and carrying firearms, forced their way into the apartment asking, "where is he, where is he[?]." The men knocked Cannon down, continued toward the living room where Abraham was located and aimed their guns at Abraham. One of the intruders fired a shot. Abraham returned fire with his 9-millimeter semiautomatic handgun and a shootout ensued. As the men were masked, the victims could not identify them.

Defendant argues that there was insufficient evidence for the jury to conclude that he participated in the crimes. We disagree. An appellate court reviews de novo a challenge to the sufficiency of evidence. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). When ascertaining whether sufficient evidence was presented, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.

People v McRunels, 237 Mich App 168, 181; 603 NW2d 95 (1999). This Court will not interfere with the trier of fact's role of determining the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 516; 489 NW2d 748 (1992), amended in part 441 Mich 1201 (1992). It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

As a preliminary matter, since defendant does not explicitly admit that a crime was committed by anyone, we note that there was overwhelming evidence that the charged crimes were committed by the men who entered the house. The testimony of the victims demonstrated that the men entered a lawfully occupied dwelling without permission, did so while the victims were lawfully present and committed an assault while in the dwelling. Thus, the elements of first degree home invasion were satisfied. In addition, the victims' testimony demonstrated that some or all of the men were armed and masked and that the victim was shot at close range by one of the invaders. There was also expert testimony that four weapons had been fired inside the house, only one of which belonged to the victim. Thus, the elements of assault with intent to commit great bodily harm were met.

Defendant was arrested moments after the shooting having been seen leaving the scene and getting into a car. When an officer stopped the car, he discovered that defendant had just been shot. Defendant told the officer that he had not entered the apartment and was shot by a stray bullet while he was outside. However, when interviewed later than evening at the police station, he made several inculpatory statements. That interview was played in its entirety at trial.¹

During the interview, defendant admitted that he had been inside the house at the time of the shooting and agreed that his blood could be inside the apartment. At one point, defendant stated that he was the first of several uninvited individuals to enter the house, but that they did so only with the intent to socialize. At another point, however, he stated that he went to the house only after it became clear that a confrontation was taking place. Defendant was able to identify Abraham's location in the apartment and determine that Abraham was firing a weapon. He was also able to recount the particular words exchanged between the assailants and Cannon.

Defendant also admitted that he intended to profit from or participate in robbing the victim. He stated that "the reason we all ran up over there like maybe if something do could go down they end up stripping him I might get a couple dollars" and that "if something came out where they end up getting some money or something . . . maybe I'll slide me a 20 or something." He also said that the "total whole thing went wrong because nobody expected [the victim] to be armed." Finally, the prosecution played a tape of a jailhouse phone call made by defendant in

¹ The police interview was conducted after defendant had been advised of his Fifth and Sixth Amendment rights and had waived them. See *Miranda v Ariz*, 384 US 436, 444; 86 S Ct 1602, 1612; 16 L Ed 2d 694 (1966).

which he stated that a .32 caliber gun had been left behind in the apartment and discussed how it could be replaced.²

When this evidence is viewed in a light most favorable to the prosecution, a jury could properly conclude beyond a reasonable doubt that defendant committed first degree home invasion and that he committed or aided and abetted the commission of assault with intent to cause great bodily harm. A jury is permitted to base its conclusion on the circumstantial evidence and, even when relying on circumstantial evidence, “the prosecution need not negate every reasonable theory consistent with the defendant’s innocence, but need merely introduce evidence sufficient to convince a reasonable jury in the face of whatever contradictory evidence the defendant may provide.” *Hardiman*, 466 Mich at 423-424, quoting *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995).

Defendant also contends the trial court erred in failing to delete a remark from the PSIR alleging his involvement in gangs, even though the court sustained his objection and ordered the remark removed from the document at sentencing. Under the circumstances, we remand for the ministerial task of striking the reference to defendant’s involvement in a gang from the presentence report. MCL 771.14(6); MCR 6.425(E)(2). See also *People v Spanke*, 254 Mich App 642, 649; 658 NW2d 504 (2003); *People v Harmon*, 248 Mich App 522, 533-534; 640 NW2d 314 (2001).

Affirmed but remanded for the ministerial correction of the presentence report. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ Joel P. Hoekstra
/s/ Michael J. Talbot

² The taped jail conversation was not placed in the record at trial and has not been provided on appeal. However, defendant has not contested that he made these statements in the recording.