

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRYL ANTHONY MARTIN,

Defendant-Appellant.

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UNPUBLISHED

January 16, 2014

No. 312324

Wayne Circuit Court

LC No. 12-000821-FH

Before: STEPHENS, P.J., and M. J. KELLY and RIORDAN, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions for first-degree home invasion, MCL 750.110a(2), and assaulting, resisting, obstructing a police officer, MCL 750.81d(1). He was sentenced as a fourth habitual offender, MCL 769.12, to 10 to 20 years' imprisonment for the home invasion conviction and 1 to 15 years' imprisonment for the assaulting, resisting, obstructing a police officer conviction. We affirm.

Defendant first contends that the trial court erred in its denial of his motion for judgment notwithstanding the verdict (JNOV) with regard to the home invasion conviction, and therefore he should be granted a new trial. We disagree. We review de novo a trial court's decision on a motion for directed verdict of acquittal. *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). "In reviewing the denial of a motion for a directed verdict, this Court views the evidence in a light most favorable to the prosecution to determine whether the evidence was sufficient to permit a rational factfinder to find the essential elements of the crime proven beyond a reasonable doubt." *People v Partridge*, 211 Mich App 239, 240; 535 NW2d 251 (1995) (citation omitted). "Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime." *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993), citing *People v Petrella*, 424 Mich 221, 275; 380 NW2d 11 (1985). "All conflicts in the evidence must be resolved in favor of the prosecution." *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007) (citations omitted). Relying on *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002), defendant argues that, in an attempt to prove he was the perpetrator, the prosecutor impermissibly built inference upon inference, which "is no longer permitted." Defendant has incorrectly read *Hardiman*, which holds exactly the opposite. *Id.*

Defendant argues that the evidence was insufficient to prove he was the person who committed the home invasion. Identity is an essential element in a criminal prosecution and the prosecutor must prove the identity of the defendant as the perpetrator of the charged offense

beyond a reasonable doubt. *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967). Positive identification by a witness or circumstantial evidence and reasonable inferences arising from it may be sufficient to support a conviction of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Defendant was found about a quarter mile from the victim's residence, about 15 minutes after the robbery. Defendant matched the physical description given by the victim, except for his height. She described a black male wearing dark clothing and either a large hat or a hoody. Although she gave his height at about six feet tall, and defendant was shorter, the victim also said that the incident happened so quickly, she "just guessed" the intruder's height. When defendant was found by police officers, he was wearing dark pants and shoes and a fur or multi-colored jacket. He was perspiring and out of breath. A black hoody, damp and warm, was found under the driver's seat of his car, and shards of glass were in the crumpled up hoody and on the soles of his shoes. The forensic scientist testified that all the glass fragments that were found on defendant's clothes and shoes were similar in physical characteristics to each other and to the glass from the doorwall in the victim's condominium, which had been shattered by the intruder.

In addition, defendant's lower pant legs and his "tennis-shoe style boots" were muddy and wet. The asphalt parking lot where he was found standing by his car was dry and not muddy. However, a person going through the grass and the field between the victim's home and the parking lot would have wet and muddy pants, because that wooded area was wet. The victim's purse was found in a dumpster by the apartment building abutting the parking lot, in which defendant stated he lived. It was too dark to search the area that night. However, the next day, a police officer found a cell phone on the ground near where defendant was standing, which the victim identified as hers.

Upon de novo review, viewing all of the evidence in the light most favorable to the prosecution, and drawing all reasonable inferences in favor of the prosecution, a rational juror could find that defendant was the man who committed the home invasion beyond a reasonable doubt.

Defendant next contends that the trial court abused its discretion when it denied his motion for a new trial on the basis of ineffective assistance of counsel. We disagree. A claim of ineffective assistance of counsel presents a mixed question of fact and constitutional law. *People v Grant*, 470 Mich 477, 484; 684 NW2d 686 (2004). This Court reviews the trial court's factual findings for clear error, while constitutional issues are reviewed de novo. *Id.* at 484-485. In order to obtain a new trial based on ineffective assistance of counsel, a defendant must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) but for counsel's deficient performance, there is a reasonable probability that the outcome would have been different. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). In examining whether defense counsel's performance fell below an objective standard of reasonableness, a defendant must overcome the strong presumption that counsel's performance was born from a sound trial strategy. *Strickland v Washington*, 466 US 668, 689; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

First, defendant contends that he was denied the effective assistance of counsel because defense counsel failed to file pretrial motions challenging defendant's stop and the search of the

vehicle, and failed to request audio and video and fingerprint evidence. Defendant is mistaken. The record shows defense counsel filed pretrial motions challenging the stop and the search of defendant's vehicle, and requesting audio, video, and fingerprint evidence. These motions were argued before the court before voir dire, and the court found that the search of the vehicle was with defendant's consent, the fingerprint evidence from the cell phone was inconclusive, and there were no other prints lifted. The court further found that there were no audio or video recordings of the stop and search. Thus, this claim is without merit. In addition, defense counsel objected to the admission of the 911 call placed by the victim. The court found the call was relevant to prove identity. Defendant has failed to challenge the relevancy of the 911 call on appeal.

Defendant further contends that he was denied the effective assistance of counsel because defense counsel failed to introduce relevant medical records, which defendant maintains he showed to defense counsel. According to defendant, the records would have challenged the testimony of the police officers and shown he could not have committed the home invasion or resisted the officers. We disagree. These medical records, which defendant attached to his trial court brief in support of his motion for a new trial, were dated December 23, 24, and 25, 2010, about a year and a half before the home invasion. Our review of the medical records does not reveal the facts that are claimed by defendant. There is no evidence to support defendant's contention that he could not run, kick, or lift his leg, that he had three fractures, that he wore a brace, that his liver was bruised, or that he required ongoing medical treatment. Because it is clear that the medical records did not support defendant's claims of incapacity, even if defendant showed these records to his trial counsel, it would certainly be sound trial strategy not to place them in the record. These medical records could not be successfully used to impeach the police officers' testimony.

Finally, defendant contends that he was denied the effective assistance of counsel because defense counsel failed to dismiss a biased juror, who had initially stated that, under the facts and circumstances presented by the court, she would believe a police officer over a citizen. A second juror also made the same statement. Following, those statements, the trial court gave a lengthy discussion concerning the factors to consider when assessing credibility and the necessity to be fair and impartial, and asked if there was any juror who would not be able to be fair and impartial. No juror indicated that he or she could not be impartial. Later, defense counsel dismissed one of the two jurors but left the other one on the panel. Once the panel was chosen, the court again gave the jury extensive instructions on how to assess credibility, which included the instruction that police officers cannot be deemed to be more credible than somebody else. The court instructed that credibility "should be based on what's consistent with reasonableness and common sense."

"Jurors are presumed to follow their instructions, and instructions are presumed to cure most errors." *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003). Jurors are presumed to be impartial until the contrary is shown. *People v Miller*, 482 Mich 540, 550; 759 NW2d 850 (2008) (citation and internal quotation omitted). "A juror who expresses an opinion referring to some circumstance of the case which is not positive in character, but swears he can render an impartial verdict, may not be challenged for cause." *People v Roupe*, 150 Mich App 469, 474; 389 NW2d 449 (1986) (citations omitted). See also *People v Unger*, 278 Mich App

210, 258; 749 NW2d 272 (2008). We find that defendant has failed to demonstrate that the juror was not impartial.

Upon de novo review, defendant's claims do not support a finding that he was denied the effective assistance of counsel. Defendant has failed to overcome the strong presumption that counsel's decisions were sound trial strategy, *Strickland*, 466 US at 689, or show that counsel's performance fell below an objective standard of reasonableness, or that there was a reasonable probability that the outcome would have been different but for counsel's deficient performance. *Carbin*, 463 Mich at 600. Accordingly, defendant was not denied the effective assistance of counsel, and the trial court did not abuse its discretion in denying defendant's motion for a new trial based on this claim.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Michael J. Kelly

/s/ Michael J. Riordan