

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODNEY LEROY BRISTOL,

Defendant-Appellant.

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UNPUBLISHED

June 6, 1997

No. 193990

Recorder's Court

LC No. 95-005713

Before: Markey, P.J., and Jansen and White, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions for second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to eighteen to thirty years' imprisonment for the second-degree murder conviction, to be served consecutively to the mandatory two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant first challenges the sufficiency of the evidence to convict him of second-degree murder. When determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Herbert*, 444 Mich 466, 473-474; 511 NW2d 654 (1993). The elements of second-degree murder are "that defendant caused the death of the victim and that the killing was done with malice and without legal justification or excuse." *People v Wofford*, 196 Mich App 275, 278; 492 NW2d 747 (1992).

Defendant emphasizes the lack of credibility of the prosecution's witnesses in their identification of defendant as the shooter. "Credibility is a matter for the trier of fact to ascertain. [Appellate courts] will not resolve it anew." *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). This is particularly true when reviewing a sufficiency claim. "Inherent in the task of considering the proofs in the light most favorable to the prosecution is the necessity to avoid a weighing of the proofs or a

determination whether testimony favorable to the prosecution is to be believed. All such concerns are to be resolved in favor of the prosecution.” *Herbert, supra*, 444 Mich 474.

Viewing the evidence in the light most favorable to the prosecutor, the trial court could believe the testimony of Alceola Ralph and Makunda Dukes. Ralph was an eyewitness to the shooting and positively identified defendant as the shooter. Dukes was in another room, but heard defendant say, “I feel like killing me a motherfucker,” and then heard a gunshot and saw defendant run out of the bedroom and the house while holding a gun. This testimony and the reasonable inferences to be drawn from it were sufficient to identify defendant as the shooter, and to indicate that he acted with malice and without justification. We agree with the trial court that the evidence of identification was sufficiently corroborated by other testimony and evidence such that a rational fact finder could conclude beyond a reasonable doubt that defendant was guilty of second-degree murder.

Defendant next claims that the trial court improperly shifted the burden of proof to the defense. We disagree. Whether the trial court has improperly shifted the burden of proof to the defense is a question of law to be reviewed de novo on appeal. See *People v White*, 212 Mich App 298, 304-305; 536 NW2d 876 (1995). It is clear that the burden of proving a defendant guilty beyond a reasonable doubt may never be shifted from the prosecution, and the defendant is never obligated to prove his innocence. *People v Rosales*, 160 Mich App 304, 312; 408 NW2d 140 (1987).

In the context of defense counsel’s closing argument, that the prosecution’s witnesses had an incentive to protect Willie Benson and that the evidence, properly understood, pointed to Benson as the killer, the challenged comments of the trial court can be seen as a response to defendant’s theory of the case and were entirely appropriate. Additionally, the trial court found the testimony of the witnesses was consistent on all relevant points and that the evidence presented left “no question in the Court’s mind who the person was that fired the shot.” It is clear the trial court was convinced of defendant’s guilt based on the strength of the prosecution’s case, not defendant’s failure to prove his innocence.

Furthermore, after a bench trial, the court is required to “find the facts specially.” MCR 2.517(A)(1). “The purpose of articulation is to facilitate appellate review.” *People v Johnson (On Rehearing)*, 208 Mich App 137, 141; 526 NW2d 617 (1994). When a defendant is convicted, the trial court facilitates appellate review by explaining both why the prosecutor’s case was convincing and why theories suggested by the defense were not. The trial court here was not placing the burden of proof on defendant but, rather, was complying with the court rule by providing “[b]rief, definite, and pertinent findings and conclusions on the contested matters.” MCR 2.517(A)(2). By explaining its finding on the contested matter of the shooter’s identity, the trial court was fulfilling its obligation as fact finder rather than demonstrating a belief that defendant had an obligation to prove another person committed the crime.

Affirmed.

/s/ Jane E. Markey  
/s/ Kathleen Jansen  
/s/ Helene N. White