

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
October 23, 2012

v

MELVIN DEON MALLOY,
Defendant-Appellant.

No. 301825
Chippewa Circuit Court
LC No. 10-000282-FH

Before: MURPHY, C.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of being a prisoner in possession of a weapon, MCL 800.283(4). Defendant was sentenced as being a fourth-offense habitual offender, MCL 769.12, to serve 18 months to 10 years' imprisonment, the term to run consecutive to the sentence defendant was already serving. Because we conclude that the prosecution presented sufficient evidence to prove defendant guilty beyond a reasonable doubt, we affirm.

Defendant was imprisoned at the Chippewa Correctional Facility when the events giving rise to this prosecution occurred. Corrections officer Everett Warner testified that on the day in question he performed a pat down search of defendant. When defendant was asked to remove his shoes, he admitted that he was in possession of "something." The search uncovered three stabbing weapons, one weapon in one shoe and two additional weapons in the other shoe.

On appeal, defendant argues that the prosecutor did not present sufficient evidence to support his conviction. Specifically, defendant maintains that the prosecutor did not present sufficient evidence that he possessed any weapon or had any weapon under his control.

When reviewing a sufficiency challenge, "evidence is reviewed de novo, in a light most favorable to the prosecution, to determine whether the evidence would justify a rational jury's finding that the defendant was guilty beyond a reasonable doubt." *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005). All conflicts in the evidence must be resolved in favor of the prosecution. *Id.* at 515. The issue of credibility is for the jury to decide, and we will not revisit credibility issues on appeal. *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). We are "required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Defendant was convicted of being a prisoner in possession of weapon contrary to MCL 800.283(4), which provides:

Unless authorized by the chief administrator of the correctional facility, a prisoner shall not have in his or her possession or under his or her control a weapon or other implement which may be used to injure a prisoner or other person, or to assist a prisoner to escape from imprisonment.

During trial, defendant testified that the weapons found were not his and that Warner was retaliating against him because he had signed an affidavit that supported another inmate's complaint against one of Warner's fellow officers. Defendant's assertion was rebutted by Warner, who testified that he searched defendant and found the weapons in defendant's shoes. On appeal, defendant questions Warner's credibility because Warner's trial testimony included additional details that were not in a report Warner completed contemporaneously with the incident. Further, defendant argues that Warner's testimony is the only evidence in support of his conviction, and that this evidence alone is not sufficient. Defendant relies on the fact that the prosecution failed to introduce any video evidence, despite the possibility that the incident was recorded, failed to introduce evidence that the shoes had a prisoner identification number tied to defendant, and made no attempt to examine the weapons for defendant's fingerprints.

The jury, having convicted defendant of being a prisoner in possession of a weapon, necessarily determined that Warner was credible. A rational jury could conclude from the officer's testimony that defendant possessed the weapons because the officer testified that he recovered three weapons from defendant's shoes during a routine prisoner search. We will not interfere with the jury's credibility determination. See *Nowack*, 462 Mich at 400; *Milstead*, 250 Mich App at 404. That video and fingerprint evidence, or evidence regarding a prison identification number in the shoes, was not admitted does not undermine the strength of the evidence that was admitted. Accordingly, the evidence, viewed in the light most favorable to the prosecution, was sufficient to support defendant's conviction beyond a reasonable doubt.

Affirmed.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Joel P. Hoekstra