

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 17, 2013

v

REGINALD C. TAYLOR, JR.,

Defendant-Appellant.

No. 312355
Oakland Circuit Court
LC No. 2010-231273-FH

Before: WILDER, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of uttering and publishing, MCL 750.249. He was sentenced as a habitual offender, fourth offense, MCL 769.12, to three to fifteen years' imprisonment. Defendant appeals by right, and we affirm.

Defendant's conviction arises from his exchange of a Henry Ford Hospital payroll check for cash at a Ferndale convenience store. Defendant presented the check to the store's owner. The owner then compared the name and address on the check to defendant's state identification card. Although the address on the check did not match the address found on the front of the identification card, the check address matched the address found on the back of the identification card. The owner also confirmed that the state identification photograph matched defendant's appearance. He made a copy of the check and the front of defendant's identification card. However, when the owner submitted the check for payment, it was returned to him as fraudulent. The owner attempted to reach defendant through certified mail, but then contacted the county sheriff's office. Approximately eighteen months after the presentation of the check, the store owner identified defendant in a photographic line-up. Although defense counsel disputed the owner's identification at trial, the jury convicted defendant as charged.

Defendant first alleges that the photographic lineup was "unnecessary, tainted and unreliable." We disagree. Because defendant failed to raise this issue below, our review is limited to plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Further, "[w]here issues concerning identification procedures were not raised at trial, they will not be reviewed by this Court unless refusal to do so would result in manifest injustice." *People v Whitfield*, 214 Mich App 348, 351; 543 NW2d 347 (1995).

A defendant's right to due process of law is violated when a pretrial identification procedure is employed that is so suggestive in light of the totality of the circumstances that there

is a substantial likelihood that it resulted in a misidentification. *People v Gray*, 457 Mich 107, 111; 577 NW2d 92 (1998). “Only the effects of, rather than the causes for, pre-identification encounters should be determinative of whether the confrontations were unduly suggestive.” *Id.* at 114 (internal quotations omitted). The defendant bears the burden to “show that in light of the totality of the circumstances, the procedure used was so impermissibly suggestive as to have led to a substantial likelihood of misidentification.” *People v Colon*, 233 Mich App 295, 304; 591 NW2d 692 (1998). If the trial court finds that the pretrial identification procedure was impermissibly suggestive, testimony concerning the identification is inadmissible unless it is established that there is an independent basis for the witness’ in-court identification “that is untainted by the suggestive pretrial procedure.” *People v Kurylczyk*, 443 Mich 289, 303; 505 NW2d 528 (1993).

In the present case, defendant does not dispute the procedure used in preparing and submitting the photographic lineup. Rather, he concludes that eyewitness identifications are inherently unreliable and that the photographic lineup in this case was presented to the store owner to prevent the defense that someone else used defendant’s identification card. In light of this conclusive argument, defendant failed to meet his burden of demonstrating a substantial likelihood of misidentification. *Colon*, 233 Mich App at 304. Furthermore, the store owner indicated at trial that his basis for the identification was not premised on a review of the state identification card because he submitted those documents to the police at the time of his complaint. Accordingly, the testimony at trial indicated that there was an independent basis for the in-court identification. *Kurylczyk*, 443 Mich at 303. This claim of error does not entitle defendant to appellate relief.

Defendant next asserts that there was insufficient evidence to support his identification as the perpetrator of the offense. We disagree.

A challenge to the sufficiency of the evidence is reviewed de novo. When reviewing a claim of insufficient evidence, this Court reviews the record in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. Appellate review of a challenge to the sufficiency of the evidence is deferential. The reviewing court must draw all reasonable inferences and examine credibility issues in support of the jury verdict. When assessing a challenge to the sufficiency of the evidence, the trier of fact, not the appellate court, determines what inferences may be fairly drawn from the evidence and the weight to be accorded those inferences. This Court must not interfere with the jury’s role as the sole judge of the facts when reviewing the evidence. [*People v Malone*, 287 Mich App 648, 654; 792 NW2d 7 (2010) (citations omitted).]

All conflicts in the evidence are resolved in favor of the prosecution, and circumstantial evidence and reasonable inferences arising from that evidence may constitute proof of the elements of the crime. *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010). The prosecution must prove the identity of the defendant as the perpetrator of a charged offense beyond a reasonable doubt. See *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976); *People v Kern*, 6 Mich App 406, 409; 149 NW2d 216 (1967). A positive identification by a witness may be sufficient to support a conviction of a crime. *People v Davis*, 241 Mich App 697, 700; 617

NW2d 381 (2000). The trier of fact determines the credibility of identification testimony, and on appeal, the issue is not resolved anew. *Id.*

In the present case, the defense attacked the store owner's failure to copy the back of the state identification card containing the address that purportedly matched the address on the check. The defense further questioned the identification of defendant when a police report recorded defendant's height at 7' 8" and weight at 506 pounds. Despite the fact that these discrepancies were highlighted to the jury and the argument that these differences constituted reasonable doubt, the jury nonetheless convicted defendant. We do not resolve the jury's credibility determination anew. *Davis*, 241 Mich App at 700.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto