

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MONTRICE DAKOTA MARTIN,

Defendant-Appellant.

UNPUBLISHED

June 12, 2014

No. 314903

Wayne Circuit Court

LC No. 12-010026-FC

Before: JANSEN, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

Defendant was convicted following a jury trial of first-degree premeditated murder, MCL 750.316(1)(a), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He received consecutive sentences of two years' imprisonment for felony-firearm, with 144 days credited for time served, and life without parole for first-degree murder. Defendant appeals by right, and we affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Tirease Briggs was shot and killed across from a park in Detroit on the night of August 24, 2012. Briggs was among many who had gathered outside the park throughout the evening for a birthday celebration. At some point during the evening, Briggs bumped into defendant, said "excuse me," and continued on his way. Later, as Briggs was talking with another man, Andre Smith, defendant approached and asked Briggs why he had not looked him in the eye when he said "excuse me." Both Briggs and Smith downplayed the incident and assured defendant that Briggs had meant nothing by it. Smith testified that defendant then lifted his shirt and flashed a chrome gun with a laser sight. About half an hour later, as Smith and Briggs were walking down the street, defendant shot Briggs in the back of the head, then continued to shoot him after he had fallen. Smith testified that he had seen a red dot focused on the back of Briggs's cap just before the first shot. Another eyewitness, Shawndale Jackson, testified that he was a little over 30 feet away from the shooting, and that he heard gunshots, saw Briggs fall, and saw defendant continue to shoot Briggs after he had fallen.

Initially, Smith and Jackson were reluctant to testify at the preliminary examination, resulting in both being subjected to witness detainers. Smith was detained after claiming he was going to lie during his testimony, and Jackson was detained because he was hostile and uncooperative on the stand and was viewed as a flight risk. At trial, both Smith and Jackson

asserted that they had known defendant prior to the night in question and positively identified defendant as Briggs' murderer.¹

On cross-examination, Smith admitted that he had previously been convicted of receiving and concealing stolen property. He also testified that he and Jackson talked about the event after it happened, but he denied having compared notes with Jackson and insisted that he was relating only what he himself had witnessed. According to Smith, he had not been drinking or smoking marijuana the night of the party because he was still recovering from overindulging on his birthday the day before. He testified that the gun with the laser sight that defendant flashed during the argument between him and the victim was the same one he saw defendant use as he was backing up and shooting at the victim's body.

Jackson admitted to drinking a pint of tequila the night of the shooting, and acknowledged aliases attributed to him by the Michigan Department of Corrections, but insisted that he had never used any of them. Jackson stated that he had not made any deals or received any promises in return for his testimony. Jackson admitted telling police when he spoke with them at his house on the night of the incident, and again when he picked defendant out of a photo array, that he did not want to sign anything.

The jury returned guilty verdicts on both charges. This appeal followed.

II. STANDARD OF REVIEW

Defendant argues that there was insufficient evidence presented to support his conviction due to the unreliable identification testimony of two eyewitnesses and thus claims denial of due process. We disagree.

We review defendant's sufficiency of the evidence challenge *de novo*. *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). In determining whether sufficient evidence was presented to support defendant's conviction, this Court "must view all the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crimes were proven beyond a reasonable doubt." *People v Harrison*, 283 Mich App 374, 377-378; 768 NW2d 98 (2009). "If the evidence presented . . . is insufficient to justify a reasonable trier of fact to find guilt beyond a reasonable doubt, a directed verdict or judgment of acquittal must be entered." *People v Lemmon*, 456 Mich 625, 633-634; 576 NW2d 129 (1998). Additionally, a conviction based upon insufficient evidence violates defendant's right to due process of law. See *In re Winship*, 397 US 359, 364; 90 S Ct 1068; 25 L Ed 2d 368 (1970); US Const, Am V; US Const, Am XIV; Const 1963, art 1, § 17.

To satisfy the elements of first-degree premeditated murder, the prosecution must prove "[m]urder perpetrated by means of poison, lying in wait, or any other willful, deliberate, or premeditated killing," MCL 750.316(1)(a), and a felony-firearm conviction requires proof of possession of a firearm during the commission of a felony, MCL 750.227b. In addition,

¹ Jackson and Smith also identified defendant from a photo array during the police investigation.

“identity is an essential element of every crime” that must be proven beyond a reasonable doubt, *People v Yost*, 278 Mich App 341, 356; 749 NW2d 735 (2008), and can be established by either direct or circumstantial evidence. See, e.g., *People v Dunigan*, 299 Mich App 579, 584-585; 831 NW2d 243 (2013).

“[T]his Court has stated that positive identification by witnesses may be sufficient to support a conviction of a crime.” *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). When assessing the sufficiency of identification evidence, “[t]he credibility of identification testimony is a question for the trier of fact that we do not resolve anew.” *Id.* After all, when presented with conflicting testimony at trial, “a jury is free to believe or disbelieve, in whole or in part, any of the evidence presented.” *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999). Finally, all conflicts in the evidence must be resolved in favor of the prosecution. *People v Kanaan*, 278 Mich App 594; 619 NW2d 57 (2008).

III. SUFFICIENCY OF THE EVIDENCE

Defendant argues that the only identification evidence presented came from two witnesses whose credibility was impeached by their criminal pasts, their inconsistent testimony, and their alleged collusion.

The jury saw and heard the two witnesses testify, it heard them admit that they did not want to be in court and that they had been more or less compelled to testify at the preliminary hearing. Under defense counsel’s cross-examination, Smith admitted to prior convictions, and Jackson acknowledged that he was intoxicated the night of the shooting and the existence of multiple aliases attributed to him.

However, the jury also heard that both witnesses knew defendant prior to the night at the park, neither harbored any ill will toward him, both had spoken with him earlier in the evening, and both had picked him out of a photo array. The jury was free “to believe or disbelieve, in whole or in part any of the evidence presented.” *Perry*, 460 Mich at 63. And the existence of any discrepancies or inconsistencies in the statements and testimony given by these two witnesses would not render their identification of defendant as the shooter incredible. See *People v Fletcher*, 260 Mich App 531, 561-562; 679 NW2d 127 (2004).

Defendant suggests collusion on the part of the witnesses in order to “put the responsibility for the shooting on somebody else.” This argument is pure speculation, unsupported by any record evidence. Indeed, both witnesses denied that the other influenced their respective testimony.

“It is the province of the jury to . . . assess the credibility of witnesses.” *People v Lemmon*, 456 Mich 625, 647; 576 NW2d 129 (1998). A rational juror could conclude, based on Smith and Jackson’s testimony, that defendant committed the offenses charged. See *Davis*, 241 Mich App 697, 700. Here, the jury made its decision after listening to the evidence and to the court’s instructions on how to decide the dependability of identification evidence. Nothing in the record suggests that its verdict was unreasonable or not supported by sufficient evidence. Because the evidence against defendant was not insufficient, defendant was not denied due

process of law. *Winship*, 397 US at 364; US Const, Am V; US Const, Am XIV; Const 1963, art 1, § 17.

Affirmed.

/s/ Kathleen Jansen

/s/ Christopher M. Murray

/s/ Mark T. Boonstra