

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
January 19, 2012

v

NORBERT DOSSIN JONES,

Defendant-Appellant.

No. 299613
Wayne Circuit Court
LC No. 09-018716-FC

Before: JANSEN, P.J., and WILDER and K. F. KELLY, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial convictions of two counts of first-degree felony murder, MCL 750.316(1)(b), for which he was sentenced to concurrent prison terms of life without parole. We affirm.

Defendant's convictions arise from the shooting deaths of Jeremy Shellington and Oday Robertson, Jr., in Shellington's Detroit home. It was the prosecution's theory that defendant knew Shellington, and that defendant and an unidentified associate shot the victims in the course of robbing Shellington. Before the shooting, Shellington's next-door neighbors, Lila McFall and Mark Boggess, observed defendant and his associate enter Shellington's home. A few hours later, Boggess heard gunshots, looked outside, observed defendant flee from Shellington's residence, and saw defendant get into the passenger side of Shellington's Ford SUV. Boggess could not see the driver. After the SUV sped from the scene, Boggess went inside Shellington's residence and observed that both victims had been shot. Shellington's burnt SUV was found the next day. At trial, defendant presented an alibi defense through the testimony of his fiancée. In addition, defendant's friend testified that two different men had admitted to him that they were the shooters.

I

Defendant first argues that his convictions of first-degree felony murder must be vacated because there was insufficient evidence to establish his identity or his participation in the offenses. Alternatively, he argues that the trial court erred by denying his motion for a directed verdict. We disagree.

When ascertaining whether sufficient evidence was presented at trial to support a conviction, we view the evidence in a light most favorable to the prosecution to determine

whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). “[A] reviewing court is 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).

The elements of felony murder are (1) the killing of a human being, (2) with malice, meaning the intent to kill, to do great bodily harm, or to create a very high risk of death or great bodily harm with knowledge that death or great bodily harm is the probable result, (3) while committing, attempting to commit, or assisting in the commission of a felony specifically enumerated in MCL 750.316(1)(b). *People v Gayheart*, 285 Mich App 202, 210; 776 NW2d 330 (2009).

A person who aids or abets the commission of a crime may be convicted and punished as if he directly committed the offense. MCL 767.39. “To support a finding that a defendant aided and abetted a crime, the prosecution must show that (1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant [either] intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement.” *People v Izarraras-Placante*, 246 Mich App 490, 496; 633 NW2d 18 (2001) (citation omitted). “Aiding and abetting” describes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds that might support, encourage, or incite the commission of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999); *People v Rockwell*, 188 Mich App 405, 411-412; 470 NW2d 673 (1991).

Defendant asserts that the prosecution presented insufficient evidence to prove that he was one of the perpetrators. Identity is an essential element in a criminal prosecution, *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976), and the prosecution must prove the identity of the defendant as the perpetrator of a charged offense beyond a reasonable doubt, *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967). Positive identification by a witness may be sufficient evidence to support a conviction of a crime. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). The credibility of the identification testimony is for the trier of fact to resolve and this Court will not resolve it anew on appeal. *Id.*

At trial, two witnesses, McFall and Boggess, placed defendant at Shellington’s house, and both were certain of their identifications. The witnesses had their first opportunity to observe defendant when he came to the door of their house looking for his “brother,” who defendant believed was inside their residence. When McFall spoke to defendant on the front porch, it was about 2:30 or 3:00 p.m. and light outside. Boggess similarly testified that it was “daytime” during this encounter, and he actually conversed with defendant as he directed defendant next door to Shellington’s house. McFall watched as defendant walked to Shellington’s house. McFall had another opportunity to observe defendant a few hours later as defendant sat in Shellington’s SUV, which was parked in the shared driveway of the residences. On this occasion, McFall looked at defendant’s “full face,” “right into his eyes” for 20 to 30 seconds, and defendant “looked directly at [her].” A short time after McFall’s second observation of defendant, Boggess heard gunshots. Boggess then observed defendant as he fled from Shellington’s residence and got into Shellington’s SUV. When defendant left Shellington’s

residence, Boggess “stared at [defendant] the whole time” as the SUV backed out of the driveway and drove away, and defendant “was staring at [him] the whole time.” Both Boggess and McFall were certain of their identifications. McFall also identified defendant in a photographic array without hesitation.

This evidence, viewed in a light most favorable to the prosecution, was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant was present at the crime scene. Although defendant points to various reasons why the jury should not have believed the witnesses’ identification testimony, it was for the trier of fact to evaluate the evidence.

Defendant also asserts that even if his identity was established, there was no evidence to prove that he actually participated in the crimes. At best, he argues, he was merely present at the scene. We fully acknowledge that the proofs presented at trial consisted solely of circumstantial evidence. But our deferential standard of review “is the same whether the evidence is direct or circumstantial,” and it is well established that “[c]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *Nowack*, 462 Mich at 400 (citation omitted). In this case, the evidence showed that there were two victims, that two different firearms were used during the shootings, and that two men were seen fleeing from the crime scene. There was evidence that defendant knew Shellington, knew that he had drugs in his home, and was at Shellington’s house with his unidentified associate on the day of the shootings. A few hours before the shootings, defendant and his associate went inside Shellington’s residence. Shortly before the shootings, defendant was again at Shellington’s residence, sitting in Shellington’s SUV. Moments after the gunshots were heard, defendant ran from Shellington’s residence, got into the passenger side of Shellington’s SUV, and fled the scene with an unidentified driver. Immediately after defendant’s departure, the two victims were discovered inside Shellington’s house, bleeding heavily from multiple gunshot wounds. Given the witnesses’ testimony about their observations, defendant’s presence at Shellington’s home with the second man, defendant’s actions immediately after the gunshots, and the evidence that two different firearms were used, the jury could have reasonably inferred that defendant acted in concert with his unidentified associate to commit the crimes. We conclude that the prosecution presented sufficient evidence to enable a rational trier of fact to find beyond a reasonable doubt that defendant participated in the shootings as a principal or as an aider or abettor. *Wolfe*, 440 Mich at 515. For the same reasons, we conclude that the trial court properly denied defendant’s motion for a directed verdict. *People v Aldrich*, 246 Mich App 101, 122-124; 631 NW2d 67 (2001).

II

Defendant also argues that the trial court pierced the veil of judicial impartiality by its questioning of witness McFall, which defendant claims was unnecessary and likely confused the witness and the jury. We disagree. Because defendant did not object to the trial court’s questions, we review this claim for plain error affecting defendant’s substantial rights. *Carines*, 460 Mich at 763.

It is well established that the trial court has a duty to control trial proceedings in the courtroom, and has wide discretion in fulfilling that duty. *People v Conley*, 270 Mich App 301,

307; 715 NW2d 377 (2006). But the court's conduct must not pierce the veil of judicial impartiality. *Id.* at 308. Invading the prosecutor's role is a violation of this tenet. *People v Ross*, 181 Mich App 89, 91; 449 NW2d 107 (1989). A court may question witnesses in order to clarify testimony or elicit additional relevant information, but must exercise caution to ensure that its questions are not intimidating, argumentative, prejudicial, unfair, or partial. MRE 614(b); *People v Conyers*, 194 Mich App 395, 404-405; 487 NW2d 787 (1992). The test to determine whether the trial court has pierced the veil of judicial impartiality is whether the court's questions "were of such a nature as to unduly influence the jury and thereby deprive the appellant of his right to a fair and impartial trial." *Conley*, 270 Mich App at 308 (citations omitted).

During direct examination, McFall testified that defendant was the man who knocked on the door, looking for his brother. McFall initially testified that this was the first time she had seen defendant *that day*. But on cross-examination, defense counsel asked, "So, here's a person you had never seen before in your life who came to the front door?" McFall answered in the affirmative. The trial court's questioning of McFall was intended to clarify whether McFall had recognized defendant from an earlier encounter, or whether she had truly seen him for the first time ever on the day of the shootings. The court's questions were relevant to a material issue in the case (identity), were limited in scope, and were posed in a neutral manner. *People v Davis*, 216 Mich App 47, 51-52; 549 NW2d 1 (1996). The fact that the testimony elicited may have damaged defendant's case does not demonstrate that the trial court's questions were improper. *Id.* Moreover, the trial court twice instructed the jury that its rulings and questions were not evidence, that it was not trying to influence the jury's vote or express a personal opinion about the case, and that if the jury believed that the court had an opinion, that opinion should be disregarded. See *id.* at 52. Defendant has failed to demonstrate that the trial court's questions were in any way improper or prejudicial, and it is well settled that jurors are presumed to follow their instructions. *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008). We perceive no outcome-determinative plain error in this regard.

Affirmed.

/s/ Kathleen Jansen
/s/ Kurtis T. Wilder
/s/ Kirsten Frank Kelly