

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CARNELL FERRELL, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

CARNELL FERRELL,

Respondent-Appellant.

UNPUBLISHED
September 18, 2007

No. 270360
Wayne Circuit Court
Family Division
LC No. 02-409740-DL

Before: O’Connell, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Respondent was convicted of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b, in an adult designated proceeding. Respondent received a delayed blended sentence. The juvenile disposition ordered placement at a medium or higher security facility with an on-grounds school. The presentence report recommended an adult sentence of 10-½ to 17-½ years’ imprisonment. Respondent appeals as of right. We affirm.

Respondent argues on appeal that the evidence was insufficient to convict him of armed robbery and felony-firearm. We disagree. This Court reviews claims of insufficient evidence de novo, viewing the evidence in the light most favorable to the prosecutor, to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002).

The elements of armed robbery are: (1) an assault, (2) a felonious taking of property from the victim’s presence or person, (3) while the defendant is armed with a dangerous weapon or an article fashioned in a manner so as to lead a person to reasonably believe it is a dangerous weapon, or the defendant represents that he or she is in possession of a dangerous weapon. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999); MCL 750.529. The elements of felony-firearm, MCL 750.227b, are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony. *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003).

In the bench trial below, the trial court was charged with making credibility determinations. *People v McCray*, 245 Mich App 631, 640; 630 NW2d 633 (2001). This Court will not interfere with the trier of fact's role of determining the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Further, it is for the trier of fact rather than this Court to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Additionally, "all conflicts in the evidence must be resolved in favor of the prosecution." *People v Fletcher*, 260 Mich App 531, 562; 679 NW2d 127 (2004).

Respondent argues that the evidence was insufficient to find that he had a gun, noting that the only evidence that he had a gun was Lavell Bryant's testimony. Additionally, respondent observes that there was no gun found at the scene, Bryant did not have any injury to his head from being hit with a gun, and respondent emphatically denied that he had a gun. However, given that the trier of fact determines witness credibility and the weight of evidence, respondent's challenges to Bryant's testimony do not establish that the evidence was insufficient to support the convictions. See *Fletcher, supra* at 561. Consequently, Bryant's testimony that respondent had a gun was sufficient evidence to establish beyond a reasonable doubt that respondent had a gun. Furthermore, we note that Bryant testified that respondent only "slapped" him on the head with the gun and that it only "stung a little bit." Additionally, officer Twanda Shaw would have examined Bryant's head on October 3, 2005, two days after the assault, so any red mark may have disappeared by then. Thus, Shaw's observation that Bryant was not injured is not dispositive to respondent having a gun.

Next, respondent argues that testimony was inconsistent. Respondent claims that Bryant said he talked to police on October 1, 2005, but Shaw's testimony was that she responded to Bryant's call on October 3, 2005. In addition, respondent claims that Bryant's testimony that he gave Shaw the description of respondent on October 1, 2005, conflicts with Shaw's testimony that Bryant gave Shaw the description on October 3, 2005. Furthermore, according to respondent, Bryant never testified that he talked to police on October 3, 2005, respondent was never on a bike, and Shaw stated that the incident occurred at 6:00 p.m. while Bryant claimed that the incident occurred at 3:00 p.m.

We note that Shaw originally testified that she responded to the call on October 1, 2005, and that respondent was arrested at 6:00 p.m. on October 1, 2005. However, on redirect examination, Shaw cleared up the inconsistency by testifying that she was at the apartments on October 3, 2005, on a follow-up call, at which time respondent was spotted and arrested. During cross-examination, Shaw had stated that the robbery took place on October 1, 2005, and that the arrest occurred on October 3, 2005. Therefore, Shaw's testimony that respondent was arrested at 6:00 p.m. on October 3, 2005, does not conflict with Bryant's testimony that the crime occurred on October 1, 2005, at 3:00 p.m. Furthermore, while Bryant testified that he talked to police on October 1, 2005, but the prosecution did not present any officer testimony that police were on the scene on October 1, 2005, it is probable that Bryant talked to police on both October 1, 2005, and October 3, 2005. Resolving any assumed conflict in testimony in favor of the prosecution, Bryant would have talked to the police on October 1, 2005, to report the crime, and again on October 3, 2005, when Shaw came to the apartments on the follow-up call. The fact that Shaw's visit was a *follow-up call* would indicate prior police involvement consistent with Bryant's

testimony. Last, the court was in the best position to determine the witnesses' credibility, and the court chose to believe the testimony of Bryant and Shaw that respondent was riding a bike over respondent's testimony that he was not riding a bike.

Respondent further claims that it makes more sense that Brandon¹ committed the crime. Respondent reasons that because Bryant and respondent knew each other, respondent would not rob Bryant because Bryant would be able to identify him. However, the prosecution does not need to "negate every reasonable theory consistent with the defendant's innocence, but must only prove its own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant may provide." *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998).

Last, respondent claims that he did not write the statement attributed to him and that he was not told to read it before he signed the statement, and therefore, it had to be full of inaccurate information and errors, including an inaccurate reference to a person named Bianca. Respondent contends that Officer Catherine Knight corroborated these claims by admitting that she wrote the statement and that respondent "wrote his name, he didn't sign it." However, respondent's contention is unfounded, given that respondent testified that he signed the statement.

The court chose to believe the consistent testimony of Shaw, Knight, and Bryant over the inconsistent statements respondent gave to police and those he made while testifying at trial. The court also chose to believe Knight's testimony that respondent was given and understood his rights and that he initialed and signed the statement. The court was in the best position to determine witness credibility and what weight to give the evidence. We hold that, in viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence for a rational trier of fact to find respondent guilty beyond a reasonable doubt of armed robbery and felony-firearm.

Affirmed.

/s/ Peter D. O'Connell
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald

¹ A full name was not provided.