STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SAM BROOKS,

Defendant-Appellant.

UNPUBLISHED
December 13, 2005

No. 258259
Wayne Circuit Court
LC No. 04-005834-01

Before: Hoekstra, P.J., and Neff and Davis, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to commit murder, MCL 750.83, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prisons terms of 20 to 60 years for the assault conviction, two to five years for the felon in possession conviction, and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

Evelyn Jackson and Arthur Everette drove to a house on Greendale Street in Detroit at approximately midnight on November 3, 2003. Everette participated in a dice game at the house and won a sum of money. Also present was a man named Tone and defendant. All witnesses agreed that defendant was dressed in gray, black, and white army fatigues that night. During a later interview with Investigator Joseph Rocha, defendant replied affirmatively to an inquiry whether he was wearing a "gray and black camo pattern." Shortly after Jackson and Everette left the Greendale residence, Everette received a phone call from Tone allegedly requesting that he return, which he did.

A vehicle pulled up behind Everette's car shortly after he arrived, and Tone got out of the Taurus and went to the driver's side of Everette's car, where Everette was seated. Everette and Jackson both identified the car as a black Ford Taurus, and Everette further indicated that it featured a pinstripe. Everette then saw a person wearing black and white fatigues get out of the passenger side of the Taurus, approach the passenger side of his vehicle, and fire several gunshots near the passenger side. Jackson testified that she was sitting in the passenger seat, with her arm in the window, and was shot in her right arm. Jackson explained that after the first shot, she turned to face the direction of where the shots were originating, and was then shot in the left arm and in the back of her head. Jackson testified that after the shooting, the person dressed in black and white camouflage ran from the passenger side of Everette's car to the

Taurus. Neither Jackson nor Everette could see the shooter's face, but maintained that the shooter was dressed in gray, black, and white fatigues. Everette testified that after the shots were fired, he quickly drove away, and the Taurus unsuccessfully attempted to follow him.

Kathleen Lauzon, defendant's fiancée at the time, picked defendant up from a location near the dice game at approximately 2:00 a.m. on November 4, 2003. She testified that defendant was wearing gray, white, and black fatigues at the time, and he was with Tone, who drove a midnight blue Ford Taurus with a pinstripe. They initially drove toward Tone's house, but drove to a different location when they encountered police vehicles in front of the house. Lauzon testified that defendant appeared agitated, and he told her that he had attempted to "hit a lick" earlier that night, but failed and shot a woman, and he had to "give her a facial" when she tried to look at him. Lauzon testified that she understood these terms to mean defendant had attempted to commit a robbery and had shot the woman in the face. She further testified that defendant later referred to the incident by stating that "[he] already shot one bitch." However, defendant later told the police that he was present near, but uninvolved in the shooting, and he denied being with Lauzon later that night. He noted that Tone was known to carry a gun.

Defendant first argues that there was insufficient evidence to convict him of any offenses. Defendant does not challenge the individual elements of any of his charged offenses, but rather that there was no evidence that he was the perpetrator. We disagree.

When evaluating a challenge to the sufficiency of evidence, we must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). We will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses. *Id*. at 514. 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). Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime, including the identity of the perpetrator. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996); *Kern*, *supra*. All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry,* 224 Mich App 447, 452; 569 NW2d 641 (1997).

The evidence was undisputed that Tone, Everette, Jackson, and defendant were at a dice game on Greendale Street, and defendant was wearing gray, black, and white army fatigues at the time. No one else was wearing a camouflage pattern. Everette received a telephone call from Tone summoning him back to the Greendale location after he and Jackson left. While parked outside, Tone approached the driver's side where Everette was seated, and a person wearing gray, black, and white army fatigues approached the passenger side and fired several shots. Although neither Jackson nor Everette could see the shooter's face, both described the shooter as wearing army fatigues. Evidence was also presented that defendant's fiancée met defendant near the location of the dice game and shortly thereafter, and that defendant was with Tone and wearing a gray, black, and white camouflage outfit. She testified that defendant seemed "agitated" and explained that he had shot a woman in the face when she tried to look at him during a failed robbery earlier in the evening. That statement about the circumstances of the

shooting closely matches Jackson's testimony that she was shot two additional times when she turned to look in the direction of the shooter.

When viewed in a light most favorable to the prosecution, a rational trier of fact could reasonably infer that defendant was the shooter. The fact that neither Jackson nor Everette could identify him by face does not preclude a finding of guilt. Although defendant asserts that evidence supporting his conviction was weak and his former fiancée's testimony was not credible, the trier of fact was entitled to accept or reject any of the evidence presented. See *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999). The trial court, as the trier of fact, could reasonably find that defendant's claims that his fiancée was not with him and that Tone was the perpetrator were not credible. Defendant raises no other sufficiency challenges, so we find the evidence sufficient to convict him of the charged offenses.

Defendant next argues that the trial court abused its discretion by denying his request for substitute counsel, arguing that there was a breakdown in the attorney-client relationship, inadequate communication, and a difference of opinion regarding how to handle the case. We disagree.

Indigent defendants are entitled to appointed counsel, but not necessarily "to counsel of his choice." *Mack*, *supra* at 14. Appointment of substitute counsel is warranted only upon a showing of good cause and if substitution will not unreasonably disrupt the judicial process. *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001). A legitimate difference of opinion between appointed counsel and a defendant regarding a fundamental trial tactic is sufficient, but differences of opinion regarding professional judgment or trial strategy are not. *Id*. at 462-463. A lack of confidence in trial counsel will not warrant substitution. *Id*. at 463. A trial court's decision regarding substitution of counsel is within the sound discretion of the trial court, and will not be disturbed on appeal absent an abuse of that discretion. *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991). "An abuse of discretion occurs when the result is so contrary to fact and logic that it demonstrates a perversity of will, defiance of judgment, or an exercise of passion or bias." *People v Akins*, 259 Mich App 545, 557; 675 NW2d 863 (2003) (citation omitted).

On the first day of trial, defendant claimed that defense counsel was "not representing [him] right," had not given him discovery, and had visited him only four times.[1] In response, defense counsel stated that she had provided defendant the requested discovery on June 21, 2004, had been in touch with him regularly, and was prepared to try the case despite the fact that some of her preparation occurred outside of defendant's presence. Defense counsel explained that defendant did not like her assessment of the evidence, and noted that other lawyers would make the same assessment. Our review of the record reveals that defendant was dissatisfied with the general manner in which his case was being handled, but he failed to show any legitimate disagreement with trial counsel over fundamental trial tactics. The record shows that defense counsel presented a cogent and vigorous defense, effectively cross-examined prosecution witnesses, and was prepared and competent to represent defendant. We find no indication that

[1] At one point, defendant claimed that defense counsel visited him only twice.

defendant was prejudiced by trial counsel not spending as much time with him as he would have liked. In sum, there is no indication that a complete breakdown of the attorney-client relationship occurred, that communication between defendant and his attorney had ceased, or that there was any disagreement regarding defense strategy.

On appeal, defendant complains that there is no indication what defense counsel did with "Investigative Subpoenas" that she obtained from him. Defendant does not indicate what the subpoenas were for or what supportive information they would have yielded. "Defendant may not leave it to this Court to search for a factual basis to sustain or reject his position." *Traylor, supra* at 464 (citation omitted). Moreover, defense counsel's decisions concerning what witnesses to call, and what evidence to present are presumed to be matters of trial strategy, *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999), which do not support a finding of good cause for substitution. See *Traylor, supra* at 463. Consequently, because defendant failed to show good cause justifying substitution of counsel, the trial court did not abuse its discretion by denying defendant's request for new counsel.

Defendant finally argues that he is entitled to resentencing for the assault with intent to commit murder conviction because the trial court inaccurately scored his sentencing guidelines range. We disagree.

Because defendant's sentence concededly remains within the guidelines range, we must affirm it "unless the trial court erred in scoring the guidelines or relied on inaccurate information in determining the defendant's sentence." *People v Babcock*, 469 Mich 247, 261; 666 NW2d 231 (2003). The trial court initially sentenced defendant to 240 months' imprisonment on the basis of an erroneous guideline scoring that resulted in a range from 171 to 356 months. The trial court subsequently agreed with defendant that the correct sentencing guidelines range was 126 to 262 months. However, it refused to change the sentence, stating, "I actually thought that the sentence I gave was fair. And just because the guidelines have gone down, it's not going to change my mind." Thus, defendant's sentence was finalized and within the guidelines range on the basis of an accurately-scored guidelines range and accurate information. His final sentence was within the guidelines range and not based on any errors or inaccuracies, so he is not entitled to resentencing.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Janet T. Neff
/s/ Alton T. Davis