STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HAYWOOD ALEXANDER-DESHON JONES,

Defendant-Appellant.

UNPUBLISHED
September 23, 2021

No. 354194
St. Clair Circuit Court
LC No. 19-002035-FH

Before: MURRAY, C.J., and M. J. KELLY and O'BRIEN, JJ.

PER CURIAM.

Defendant Haywood Alexander-Deshon Jones appeals as of right his jury trial convictions of operating while intoxicated (OWI), third offense, MCL 257.625(1), and operating while license suspended (DWLS), second offense, MCL 257.904(1). Defendant was sentenced as a third-offense habitual offender, MCL 769.11, to 24 months to 10 years' imprisonment for OWI, and 178 days' imprisonment for DWLS. We affirm.

STATEMENT OF FACTS

Late in the evening on May 28, 2019, defendant and two other passengers were driving in a 1989 Buick LeSabre and pulled up beyond the stop line at a traffic light on 10th Avenue in Port Huron. Officer Andrew Robertson of the Port Huron Police Department (PHPD) pulled up directly behind the vehicle and ran a standard check on the car's license plate. Upon receiving an expiration notice for the vehicle's insurance, Robertson flashed his top light in an attempt to pull over the Buick for a traffic stop. The Buick quickly accelerated and did not stop or pull over. When Robertson turned on his siren, the driver tapped the brakes but continued driving for several blocks, weaving inside the lane before turning into a residence located at 1022 10th Avenue and pulling halfway up the driveway.

Robertson pulled up behind the Buick, but as he alighted his vehicle, the Buick moved further up the driveway and disappeared behind the residence. Robertson got back into his patrol car and followed the Buick, losing sight of the vehicle for a couple of seconds. Once behind the house, Robertson approached in his car and saw all three passengers outside the Buick standing and shutting their doors. Robertson never directly saw any of the three men driving the vehicle,

but he did see defendant and one of the passengers switch sides outside of the car, resulting in defendant on the passenger's side instead of the driver's side. Robertson approached the three men that were then standing next to the car. He asked defendant why the vehicle was pulled to the rear of the residence, and defendant answered that he lived there.

At this point in time, other PHPD officers were arriving, and the passenger now near the driver's side, Vanderlee Walker, became hostile and was arrested for disorderly conduct by Robertson, who placed him in the back of the patrol car. Officer Kevin Dombek then arrived and also never saw who had been driving the car. He began speaking with defendant and the third unidentified passenger regarding the traffic stop. Defendant informed Dombek that the vehicle was his and that he was driving it at the time of the traffic stop. Defendant also informed Dombek that he had insurance, which was located in the glove box of the Buick. Dombek did not find proper insurance in the Buick but did find a beer bottle and a beer can in the backside of the vehicle.

Officer Brian Daly arrived next and approached defendant. He did not ask any questions about who was driving, nor did he see who was driving. Robertson then returned after arresting Walker and inquired if defendant had been drinking because he presented physical signs of intoxication, including odor of intoxicants, slurred speech, and bloodshot and watery eyes. Defendant responded affirmatively that he had been drinking. Robertson asked defendant to perform Field Sobriety Tests (FST) and informed him that the tests would help determine if defendant was intoxicated while driving. At this point, for the first time, defendant denied driving the vehicle. Upon refusal to perform the FST, Robertson arrested defendant, and Daly searched him, finding car keys in defendant's front right pocket that turned over the Buick's engine.

After the arrest and early into the morning, defendant was taken to St. Clair County Jail, where Robertson read defendant his chemical test rights, but defendant refused to take one. After Robertson obtained a signed search warrant, defendant's blood was drawn by a certified nurse at the jail and sent to the Michigan State Police for testing. The blood samples were analyzed, and the results yielded a blood alcohol concentration of 0.301 grams of alcohol per 100 milliliters of blood.

The patrol cars were equipped with audio and visual recording systems. The system visually records the "front angle" of the car. It also audibly records inside and outside the car, with the possibility of recording both simultaneously. A microphone is positioned on an officer's gun belt to record audio outside the car. A video consisting of patrol car dash camera footage was admitted at trial and played for the jury. In the video, the speakers are not visible; however, Officer Dombek testified the conversation heard was between himself and defendant, who admitted to driving the vehicle. Dombek is heard asking "who is driving" to which defendant responds, "I . . . this is my car . . . that's the reason I pulled in here because this is where I live, 1022 10th Avenue."

After a one-day trial, defendant was found guilty of both OWI and DWLS by the jury. The court concluded at defendant's sentencing hearing that there was clear evidence of two prior convictions and defendant was sentenced as a habitual third offender.

I. ANALYSIS

Defendant argues that the guilty jury verdicts for OWI and DWLS are not supported by evidence sufficient to meet the burden of proof—beyond a reasonable doubt—concerning the identity element and, as a result, his constitutional due-process rights have been violated.

A. PRESERVATION OF ISSUE

A defendant "need not take any action" to preserve on appeal an argument that insufficient evidence existed to convict him. *People v Williams*, 294 Mich App 461, 471; 811 NW2d 88 (2011). Here, defendant's constitutional challenge regarding the violation of his due-process rights as a result of being convicted with insufficient evidence is preserved.

B. STANDARD OF REVIEW

We review *de novo* whether the evidence was sufficient to support the jury's verdict. *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005). The Court "must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). This is not a question of if there is *any* evidence, but rather if there is *sufficient* evidence. *Id*.

C. APPLICATION

The prosecution must prove a defendant's guilt "beyond a reasonable doubt for each element of the crime charged." *People v DeLeon*, 317 Mich App 714, 719; 895 NW2d 577 (2016). Without sufficient evidence to support a finding of guilt, a defendant cannot be convicted of a criminal offense. *People v Railer*, 288 Mich App 213, 216; 792 NW2d 776 (2010). The trier of fact must "rationally apply that standard to the facts in evidence[; a] 'reasonable doubt,' at a minimum, is one based upon 'reason.' " *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992) (citation omitted). Both direct and circumstantial evidence should be considered in favor of the prosecution when determining if the burden has been met. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). See also *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000) (stating that the standard of proof is "the same whether the evidence is direct or circumstantial"). The prosecution "is not required to negate every reasonable theory" about the events that occurred or could have occurred, but rather is "only required to produce sufficient evidence to establish guilt." *Hardiman*, 466 Mich at 430.

In a jury trial, the jurors are the "sole judge[s] of the facts" and are in "a much better position to decide the weight and credibility to be given to [a witness's] testimony." *Wolfe*, 440 Mich at 514-515. "Circumstantial evidence and reasonable inferences arising from the evidence may be sufficient to prove the elements of a crime." *People v Dillard*, 303 Mich App 372, 377; 845 NW2d 518 (2013), abrogated on other grounds by *People v Barrera*, 500 Mich 14; 892 NW2d 789 (2017). This includes identity, which is an "element of every offense." *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008). As a result, it is the job of the trier of fact to make a credibility determination regarding identification testimony, and this Court cannot "resolve anew" that question. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

In addition, the *total evidence* presented must be considered when reviewing for insufficient evidence. *People v Helcher*, 14 Mich App 386, 391; 165 NW2d 669 (1968). This Court has held that inferences based on other inferences need not be rejected, but rather

> the question is merely whether the total evidence, including reasonable inferences, when put together is sufficient to warrant a jury to conclude that defendant is guilty beyond a reasonable doubt. [] If enough pieces of a jigsaw puzzle fit together the subject may be identified even though some pieces are lacking. [*Id*. (quotation marks and citations omitted).]

The *Hardiman* Court further stated that "if each inference is independently supported by established fact, any number of inferences may be combined to decide the ultimate question." *Hardiman*, 466 Mich at 428. As a result, reasonable inferences made by the jury regarding witness credibility can be sufficient to prove the elements of a crime, including identity, and convict a defendant. *Carines*, 460 Mich at 757.

OWI is defined by MCL 257.625(1) as follows:

> Sec. 625. (1) A person, whether licensed or not, shall not *operate a vehicle* on a highway or other *place open to the general public* or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is *operating while intoxicated*. As used in this section, "operating while intoxicated" means any of the following:
>
> (a) The person is under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance.
>
> (b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning October 1, 2021, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
>
> (c) The person has an alcohol content of 0.17 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. [(Quotation marks omitted and emphasis added.)]

The evidence at trial supported the conviction of OWI. Specifically, Robertson testified that defendant was driving while intoxicated, which was corroborated by Dombek and Daly. The initial attempted stop occurred on 10th Avenue, a public road in Port Huron. Defendant does not dispute that he was intoxicated with a BAC of 0.301, which is supported by blood test results. Defendant also presented physical signs of intoxication, including slurred speech, bloodshot and watery eyes, and odors of intoxicants. Defendant admitted to Robertson that he had been drinking, and a beer bottle and beer can were found within the vehicle. The foregoing facts satisfy that the Buick was in a public place available to the general public and that defendant was intoxicated.

DWLS is defined by MCL 257.904(1) as follows:

> Sec. 904. (1) A person whose operator's or chauffeur's *license or registration certificate has been suspended or revoked*, whose application for license has been denied, or who has never applied for a license, shall not *operate a motor vehicle* on a highway or other *place open to the general public* or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this state. [(Quotation marks omitted and emphasis added.)]

The parties stipulated that defendant's license was suspended and proper notice was given by the Secretary of State pursuant to MCL 257.212, and it is undisputed that the Buick was traveling on a public road. As a result, elements of the DWLS charge as listed above are satisfied.

Finally, the OWI and DWLS offenses both contain a similar requirement: that defendant was operating a motor vehicle. MCL 257.625(1); MCL 257.904(1). The term "operating" is defined as "being in actual physical control of a vehicle." MCL 257.35(a). As a result, the prosecution was required to prove beyond a reasonable doubt that defendant had physical control of the Buick.

Specifically, the prosecution presented evidence that defendant confirmed he lived at the address where the Buick ultimately stopped, while Dombek testified—and video evidence showed—that defendant directly told Dombek that he was driving the vehicle. Daly also found keys belonging to the vehicle in defendant's pocket.

Additional testimony from all three officers also allowed the jury to infer that defendant was the individual who drove that night. After following the vehicle for several blocks and pulling into the driveway behind it, Robertson saw three individuals standing outside the car and defendant shutting the driver's door. He subsequently saw defendant and Walker switch sides. Even if Robertson did lose sight of the vehicle for 17 seconds, as suggested by defendant, it is likely not significant because that would not have been enough time for two adults, at least one of whom was confirmed to be intoxicated, to exit the vehicle and switch positions with enough time for Robertson to witness the two individuals yet again switch sides. Robertson also directed questions regarding driving the vehicle towards defendant who answered the questions. Based on the facts that defendant possessed keys to the Buick, admitted driving the vehicle to his own residence, and what Robertson testified to, the jury could have reasonably concluded that defendant was operating the vehicle at that time, thus satisfying the element of identity.

Defendant argues that there was insufficient evidence of his identity because significant parts of Robertson's testimony were not credible. First, he asserts that Robertson made a false statement to defendant that Robertson had defendant on camera driving the vehicle. Although Robertson testified that he did make that statement to defendant, it does not necessarily discredit all of Robertson's testimony. Despite the purported false statement to defendant, Robertson never testified that he expressly saw who was driving the car, only that he saw defendant shut the driver's door and switch sides of the car from outside the vehicle. Robertson also testified that defendant told him that he pulled around to the back of the house because he lived at that residence. The Court in *Wolfe* held that the jury was the "sole judge of the facts." *Wolfe*, 440 Mich at 514. The jury might question the validity of the testimony, but because the jury heard the testimony first hand, it was the jury's job, as the trier of fact, to determine the weight of the allegedly false

statement and the credibility of Robertson's entire testimony. Ultimately, the jury deemed all the testimony and evidence sufficiently credible to find defendant's guilt beyond a reasonable doubt.

Second, defendant seems to suggest that Robertson's actions throughout the traffic stop were arbitrary with no underlying rationale. Defendant offers several theories in an effort to demonstrate that Robertson's testimony lacked credibility and that defendant was not the person driving. However, as stated in *Hardiman*, 466 Mich at 430, every reasonable theory about what could have happened—or here, who was driving—does not need to be negated in order for the prosecution to prove defendant's guilt beyond a reasonable doubt.

Nevertheless, the prosecution did negate several of these theories. Robertson testified that running the license plate through LEIN was normal protocol and not unusual. A jury could easily weigh this evidence as Robertson simply performing his current assignment of road patrol. Similarly, after two and a half years working with PHPD, a jury could readily determine that Robertson used his discretion by not investigating further into the unidentified individual who was compliant with Robertson's questions and was not seen switching sides of the car. A set of keys was found in defendant's pants pockets, and those same keys were able to turn over the Buick's ignition. Defendant suggests that one of the other passengers could have possessed a set of keys during this event and was the real driver of the vehicle; however, defendant only offers speculation on the point and, again, the jury was free to accept or reject all or some of Robertson's testimony.

Despite defendant's conjecture, and based on the evidence presented, it would be easy for a jury to reasonably infer that the person who lived at the final destination and who had keys to the vehicle in his pocket was the driver of the vehicle. In *Helcher*, 14 Mich App at 388, this Court held that a jury could reasonably conclude that the car that had been reported as stolen was the same car driven by the defendant, even though there was no direct evidence to identify or establish it as the same car. The Court stated that the jury could make inferences based upon other inferences because they were not "based upon evidence which is uncertain." *Id*. at 390. Also, this Court cannot "resolve anew" any credibility determinations regarding identification testimony, *Davis*, 241 Mich App at 700, and so here it was left to the jury to make credibility determinations and reasonable inferences. Because neither was based upon "uncertain" evidence, both the evidence and reasonable inferences from that evidence are sufficient to support a guilty finding beyond a reasonable doubt.

Due process guarantees that "no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." *Jackson v Virginia*, 443 US 307, 316; 99 S Ct 2781; 61 L Ed 2d 560 (1979). We hold that there was sufficient evidence to support the jury's verdicts, and defendant's due-process rights were not violated.

Affirmed.

/s/ Christopher M. Murray
/s/ Michael J. Kelly
/s/ Colleen A. O'Brien