

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REYNAURD MARTELL GOBER,

Defendant-Appellant.

UNPUBLISHED
October 17, 2013

No. 309323
Wayne Circuit Court
LC No. 10-001008-FC

Before: SAAD, P.J., and SAWYER and JANSEN, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial convictions of first-degree premeditated murder, MCL 750.316(1)(a),¹ mutilation of a dead body, MCL 750.160, possession of a firearm by a felon (felon-in-possession), MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), second offense, MCL 750.227b. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of life without parole for the first-degree murder conviction, 12 to 25 years for the mutilation conviction, and 6 to 25 years for the felon-in-possession conviction. He was also sentenced to a mandatory, consecutive term of five years in prison for the felony-firearm conviction. We affirm.

I

Damian Onwuzurike, a sixty-year-old Ford Motor Company retiree, owned several rental properties, including a house at 15835 Baylis Street in Detroit. Following his retirement, Onwuzurike obtained part-time employment at a Walmart store in Dearborn. After his shift ended on June 15, 2009, Onwuzurike punched out and sent a text message to his wife. Onwuzurike's family never heard from him again. Onwuzurike's wife subsequently filed a missing person report with the police. She ultimately determined that approximately \$4,000 was missing from Onwuzurike's account at Dearborn Federal Credit Union.

¹ The jury also convicted defendant of first-degree felony murder, MCL 750.316(1)(b), but this conviction was vacated by the circuit court.

In the early morning hours of June 17, 2009, Onwuzurike's burned body was discovered behind a garage at 20109 Oakfield Avenue in Detroit. It appeared that the body had been bound with an electrical cord, wrapped in a piece of carpet, and then set on fire. Detroit police officers collected evidence from the scene, including green paint chips and the electrical cord, which had been melted or fused into the carpet. According to Officer Raymond Diaz, a Detroit police evidence technician, the materials recovered from the scene "had a strong odor of some type of accelerant fluid." The medical examiner testified that Onwuzurike's body was burned beyond recognition and had to be identified using dental records. An autopsy established that Onwuzurike had been beaten and shot in the left buttock. Among other things, Onwuzurike had several broken ribs and a head injury caused by blunt force trauma. According to the medical examiner, the gunshot wound was fatal, but it would have taken "a few hours" for Onwuzurike to bleed to death. The medical examiner confirmed that Onwuzurike was already dead at the time his body was burned. There was a "burnt or charred fragment of carpet" fused to Onwuzurike's body.

Detroit police evidence technicians responded to the house at 15835 Baylis Street on the evening of June 20, 2009. Officer Thomas Smith testified that the living room, first-floor bedroom, hallway, and stairway were all carpeted with the same brown carpet. However, the brown carpet was missing from the dining room. It appeared that the dining room carpet had been cut out. There were carpet fibers stuck to a pry bar that was found on the dining room table. Officer Smith concluded that the pry bar had been used to remove the dining room carpet and seized it as evidence. A box cutter was also located in the living room area. From the bedroom, Officer Smith seized a Dearborn Federal Credit Union deposit receipt bearing the name Damian Onwuzurike. Officer Smith seized a one-gallon gasoline can from the kitchen counter, a rubber glove from a kitchen drawer, a putty knife from the basement floor, a baseball bat from the kitchen floor, and a pair of wire cutters. A matching rubber glove was found on a utility sink in the basement. There was a tire iron in the kitchen as well, but it was not collected as evidence.

Police found dried blood in the basement and on the railing along the basement stairs. According to Officer Smith, the entire basement was wet, as if someone had attempted to clean it. He testified that "[t]here were puddles in low lying areas of the basement." A garden hose was connected to the faucet of the utility sink. Green paint chips were recovered from one corner of the basement. Similar green paint chips were found on the putty knife that was recovered from the basement. A pile of burned debris, including burned cloth and the charred sole of a shoe, was located in a driveway behind the house. Officer Smith testified that the pile of debris smelled strongly of gasoline. A second gasoline can was recovered from an abandoned vehicle in the backyard.

Jacqueline Tucker, a neighbor, testified that she was familiar with the house at 15835 Baylis Street in Detroit. Tucker confirmed that defendant and his girlfriend rented the house from Onwuzurike and had lived there for approximately six months at the time of Onwuzurike's death in June 2009.

Defendant's girlfriend, Jennifer Martinez, testified that she had lived with defendant in the house at 15835 Baylis Street. Martinez testified that she was present in the house when Onwuzurike was beaten and killed on June 15, 2009.² She testified that Onwuzurike came to the house that day to collect the rent. According to Martinez, defendant began arguing with Onwuzurike and refused to pay him. Defendant struck Onwuzurike multiple times and then knocked him down. At some point, defendant and another individual moved Onwuzurike into the basement and continued to punch and kick him for another 15 or 20 minutes. Defendant then went upstairs to retrieve an extension cord. Upon returning to the basement, defendant bound Onwuzurike with the cord. Martinez testified that, after approximately two hours, defendant shot Onwuzurike in the buttocks. Onwuzurike was still alive after being shot and "was just lying" on the basement floor. According to Martinez, defendant then stated that "he wasn't going to go down for this by himself," and instructed her to cut off one of Onwuzurike's toes using a pair of bolt cutters. Martinez complied with defendant's instructions. After cutting one of Onwuzurike's toes, Martinez went back upstairs.³ According to Martinez, defendant took Onwuzurike's checkbook and signed several of the checks.

The next morning, Martinez saw a large roll of carpet in the dining room. She kicked it and it did not move. She surmised that Onwuzurike's body was rolled up in the carpet. Martinez testified that defendant, defendant's cousin, and a third individual then loaded the rolled-up carpet into a white van that belonged to defendant's cousin. Later, defendant, Michael White, and another individual took Martinez with them in a green car while they drove to a credit union. Defendant and White went into the credit union and cashed one of Onwuzurike's checks. They then returned to 15835 Baylis Street, retrieved another of Onwuzurike's checks, and went back to cash it. When they returned to the credit union, White was arrested. Martinez, defendant, and the other individual fled the credit union as soon as White was arrested.

Martinez testified that she and defendant returned to the house at 15835 Baylis Street. Martinez cleaned the basement with water from the basement sink to "get rid of the blood . . . [a]nd fingerprints" and "[t]o cover up the murder." Among other things, Martinez stated that she "hosed down" the basement and chipped paint off the basement floor with a putty knife. According to Martinez, she and defendant then fled the state. Martinez and defendant first drove to Ohio, then to Tennessee, and ultimately to Arizona. Defendant received money along the way from friends who wired it to him via Western Union. Martinez testified that defendant eventually left her in New Mexico.

² Pursuant to an agreement with the prosecution, Martinez pleaded guilty to the offense of second-degree murder, MCL 750.317, and was sentenced to 8 to 20 years in prison. In exchange, Martinez agreed to testify against defendant at trial.

³ The medical examiner testified that "[a]ll of the [decendent's] fingers and toes were present, however because of the burns, all of the soft tissue on them was gone, so if there were any cuts or bruises or swellings to them, I would not be able to tell you that."

After living with a man named Quasin Eason in Albuquerque, New Mexico, for several months, Martinez returned to Michigan.⁴ Martinez was arrested in Detroit on February 16, 2011, and was charged with murder. Martinez ultimately told the police that defendant had beaten and killed Onwuzurike in the basement of the house at 15835 Baylis Street. Martinez testified that defendant subsequently wrote her letters urging her to remain strong, to stay loyal to him, and not to cooperate with the police.

On cross-examination, Martinez admitted that she heard voices and that she was taking various psychiatric medications. But Martinez did not believe that any of the medications affected her ability to remember. Martinez also admitted that she had used several different kinds of illicit drugs in the past. Martinez testified that she had previously been in a mental hospital and that defendant had helped her get discharged from the hospital. Defense counsel pointed out certain minor inconsistencies between Martinez's trial testimony and her testimony at the plea hearing on August 4, 2011. Defense counsel also attempted to impeach Martinez's credibility with several statements that she allegedly made to Eason concerning her participation in the crime. But Martinez denied having made the statements. Defense counsel asked Martinez whether she was familiar with a Mexican gang known as Sureno 13. Martinez stated that she had heard of the gang, but maintained that she did not know anything about it.

Michael White variously testified that he and defendant had been friends for a few weeks, for a few months, and since childhood. White consistently testified, however, that he had visited defendant at 15835 Baylis Street in the past and had seen Martinez there on at least one occasion. Defendant called White on June 17, 2009, told White that he had "robbed somebody," and asked White to help him cash some checks. When defendant called, White was with his friend Rache Lee. Lee, who also knew defendant, informed White that defendant was "crazy" and had been "torturing somebody" in his basement. A day or two later, defendant and Martinez asked White to help them cash a check that was made out in the amount of \$2,000. When White arrived at 15835 Baylis Street, he noticed that the carpeting had been removed from the dining room floor. White accompanied defendant and Martinez to the credit union in a green car and cashed the check. Defendant ultimately told White that he had tied up a person in his basement and had set the person on fire.

On June 19, 2009, when White attempted to cash a second check, he was arrested. A surveillance camera filmed White attempting to cash the second check and also filmed defendant standing next to White inside the credit union. This video footage was admitted into evidence at trial. After being arrested, White told the police that defendant had tortured someone in his basement. White also identified photographs of defendant and Martinez.

⁴ Martinez clarified that she first lived at a homeless shelter in Albuquerque, New Mexico. Martinez stated that she met Eason at the shelter on or about September 1, 2009. Martinez described Eason as "a boyfriend." Martinez told Eason about defendant and described the murder of Onwuzurike. Martinez testified that she and Eason eventually had a physical altercation and she moved into a battered women's shelter.

Rache Lee was White's roommate. Lee had visited defendant at 15835 Baylis Street. Sometime in June 2009, Lee overheard a telephone conversation between defendant and White. Defendant stated that he was torturing someone in his basement and burning the person with cigarettes. Lee could hear a male voice screaming in the background. Lee later told White that defendant was "crazy" and that he was "torturing somebody, or something of that nature."

In October 2009, Lee gave testimony at the prosecuting attorney's office pursuant to an investigative subpoena. Attorney David Dunn accompanied Lee to the investigative subpoena proceedings. But Lee felt uncomfortable providing incriminating details about defendant because he had just learned that Dunn was also representing defendant. Lee testified that he was later intimidated by various people who contacted him and told him not to testify against defendant.

Lee was aware that White had helped defendant cash a check. Defendant told Lee that "[h]e couldn't cash [some of the checks] because [there] was blood splattered" on them. Defendant informed Lee that he had obtained the checks by "strong-arm[ing] someone." Lee presumed that defendant had taken the checks from the man who he had tortured in the basement. When Lee later went to the house at 15835 Baylis Street, he noticed that the carpet in the dining room was missing.

Lee admitted that he had previously been convicted of an offense involving an element of theft. Lee also admitted that, during June 2009, he had been "getting high every day" by smoking marijuana, consuming alcohol, and taking pills. Defense counsel attempted to impeach Lee's credibility by pointing to numerous inconsistencies between Lee's trial testimony and his earlier testimony during the investigative subpoena proceedings. Lee conceded that he was "under the influence" when he overheard the allegedly incriminating telephone call from defendant. Lee gave vague and evasive responses to many of defense counsel's questions.

After speaking to the police, Lee received several calls from defendant. Defendant told Lee that he and Martinez had fled to Arizona and various other states. Between June and October 2009, Lee wired defendant money via Western Union several times. At some point, defendant called and asked Lee to check whether a warrant had been issued for his arrest. After defendant returned to Michigan, Lee gave defendant's telephone number to the police. Lee retained Attorney David Dunn to represent him. Lee testified that he first discovered that Dunn was also representing defendant in October 2009.

Quasin Eason confirmed that he and Martinez had been in a relationship and that they had lived together for about a year in New Mexico. According to Eason, Martinez confessed to him that she and defendant had beaten and murdered their landlord and had stolen their landlord's checkbook. Eason testified that Martinez "started bragging" about her participation in the murder, called herself a "gangster bitch," and stated that she had gotten an "[a]drenaline rush" from helping with the murder. At some point Martinez apparently became concerned that Eason had "snitched on her." Eason testified that Martinez then "tried to have [him] killed by some Mexicans," including a member of a Mexican gang named Joey Garcia.

When defendant was arrested, he denied having killed Onwuzurike and having burned Onwuzurike's body. However, defendant did admit that he had lived at 15835 Baylis Street.

Michigan State Police forensic scientist Karl Suni used a scanning electron microscope and an infrared spectrometer to analyze the green paint chips discovered near Onwuzurike's burned body at 20109 Oakfield Avenue, as well as those discovered in the basement of the house at 15835 Baylis Street. Suni testified that the paint chips collected at 20109 Oakfield Avenue were similar in chemical composition and color to those collected from the basement at 15835 Baylis Street. Michigan State Police scientist Erin Cohoe testified that the burned carpet found with Onwuzurike's body at 20109 Oakfield Avenue was similar in all respects to carpet samples taken from the house at 15835 Baylis Street. Michigan State Police forensic scientist Andrea Halverson analyzed the samples of dried blood that were collected from the house at 15835 Baylis Street. According to Halverson, DNA from one of the blood samples collected from the area of the basement stairway matched a known sample of Onwuzurike's DNA that had been collected during the autopsy.

Following closing arguments by counsel, the circuit court instructed the jury on the law. As noted previously, the jury convicted defendant of first-degree premeditated murder, MCL 750.316(1)(a), first-degree felony murder, MCL 750.316(1)(b), mutilation of a dead body, MCL 750.160, felon-in-possession, MCL 750.224f, and felony-firearm, second offense, MCL 750.227b.

II

Defendant does not dispute that Onwuzurike was murdered and that Onwuzurike's body was subsequently burned. Instead, defendant's sole argument on appeal is that the prosecution presented insufficient evidence to prove his identity as the person who committed the crimes. In particular, defendant asserts that several of the prosecution's witnesses lacked credibility.

We review the evidence in a light most favorable to the prosecution to determine whether any rational trier of fact could have found that the essential elements of the crimes were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

The identity of the perpetrator is an essential element in every criminal prosecution. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976); *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008). A defendant's identity may be established by direct testimony or circumstantial evidence. *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967).

The prosecution presented sufficient evidence to prove beyond a reasonable doubt that defendant was the person who murdered Onwuzurike and burned Onwuzurike's body. Martinez testified that she witnessed defendant beating and killing Onwuzurike in the house at 15835 Baylis Street. Among other things, Martinez testified that she saw defendant argue with Onwuzurike, force Onwuzurike into the basement, strike Onwuzurike multiple times, tie up

Onwuzurike with an extension cord, and shoot Onwuzurike in the buttocks with a firearm.⁵ Martinez further testified that she saw defendant load the rolled-up carpet, which presumably contained Onwuzurike's body, into a white van owned by defendant's cousin. Similarly, White testified that defendant told him that he had tortured a person in his basement and had set the person on fire. A positive identification by one witness is generally sufficient to support a conviction. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

Defendant argues that Martinez was inherently unworthy of belief because she had made a deal with the prosecution and had agreed to testify against him in exchange for a reduced sentence. But the circumstances of Martinez's plea agreement were fully explained to the jury, which was completely aware that Martinez had pleaded guilty in exchange for her testimony. "Juries, not appellate courts, see and hear witnesses and are in a much better position to decide the weight and credibility to be given to their testimony." *Wolfe*, 440 Mich at 515, quoting *People v Palmer*, 392 Mich 370, 376; 220 NW2d 393 (1974).

Defendant further contends that the jury should not have believed Martinez because she admitted that she heard voices, took psychiatric medications and other drugs, and had made inconsistent statements to Quasin Eason. We cannot agree. The jury heard the testimony of both Martinez and Eason. The jurors were able to determine for themselves whether Martinez's inconsistent statements to Eason were sufficiently contradictory to call her credibility into question. "This Court does not weigh the competing evidence; that is the jury's function." *People v Unger*, 278 Mich App 210, 228; 749 NW2d 272 (2008). The jury also heard Martinez testify that she heard voices, had used illicit drugs in the past, and had been prescribed psychiatric medications. Despite this, the jury apparently chose to believe the identification testimony given by Martinez in this case. "The credibility of identification testimony is a question for the trier of fact that we do not resolve anew." *Davis*, 241 Mich App at 700.

In addition, defendant attacks the credibility of Michael White and Rache Lee. Defendant argues that White had lied in the past and was merely attempting to shift the blame to defendant for illegally cashing the stolen checks. Defendant points out that White provided vague answers and inconsistent accounts of his relationship with defendant. Defendant further argues that Lee was unbelievable because he was high on drugs when he overheard the alleged telephone conversation concerning the torture and beating of Onwuzurike. Again, however, these questions of credibility were solely for the jury to decide. *Wolfe*, 440 Mich at 515. "The jury is 'free to believe or disbelieve, in whole or in part, any of the evidence presented at trial.'" *Unger*, 278 Mich App at 228, quoting *People v Eisenberg*, 72 Mich App 106, 115; 249 NW2d 313 (1976).

In sum, Martinez was an eyewitness to the beating and murder of Onwuzurike. Two other witnesses, both of whom knew defendant, provided strong circumstantial evidence that defendant was the perpetrator of the charged offenses. We conclude that the prosecution presented sufficient evidence to prove beyond a reasonable doubt that defendant was the person

⁵ The medical examiner specifically testified that the gunshot wound to Onwuzurike's left buttock was fatal.

who murdered Onwuzurike while possessing a firearm, and subsequently mutilated Onwuzurike's body.⁶ See *Kern*, 6 Mich App at 409-410.

III

Nor was the jury's determination that defendant was the perpetrator of the charged offenses against the great weight of the evidence. "We review unpreserved claims that the verdict was against the great weight of the evidence for plain error affecting the defendant's substantial rights." *People v Brantley*, 296 Mich App 546, 553; 823 NW2d 290 (2012).

A jury's verdict is against the great weight of the evidence only if "the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *Unger*, 278 Mich App at 232; see also *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998).

As explained, Martinez was an eyewitness to the beating and murder of Onwuzurike. Among other things, she testified that she saw defendant beat Onwuzurike and shoot him with a gun in the basement of the house at 15835 Baylis Street. In addition, both White and Lee testified that they heard defendant describing his participation in the crimes. The defense presented no countervailing evidence of its own, choosing instead merely to attack the credibility of the prosecution's witnesses during its closing argument. Now defendant renews these same arguments on appeal, arguing that the incredibility of the prosecution's witnesses renders the jury's verdict unreliable. However, "[c]onflicting testimony and questions of witness credibility are generally insufficient grounds for granting a new trial." *Unger*, 278 Mich App at 232. "[I]ssues of witness credibility are for the trier of fact." *Id.* In view of the testimony presented at trial, the jury's determination concerning the identity of the perpetrator was not against the great weight of the evidence. See *id.* We perceive no plain error affecting defendant's substantial rights with respect to this issue.

⁶ We acknowledge that there was no eyewitness testimony concerning defendant's role in the burning of Onwuzurike's body. However, on the basis of the testimony and the other physical evidence, the jury could have reasonably inferred that Onwuzurike's body was rolled up in the carpet that Martinez saw at 15835 Baylis Street. As explained earlier, "[i]t is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *Hardiman*, 466 Mich at 428. Martinez testified that she then witnessed defendant loading the rolled-up carpet into a white van owned by his cousin. White testified that defendant told him that he tortured someone in his basement and then set the person on fire. A piece of charred carpeting that matched the carpet in the house at 15835 Baylis Street was found fused to Onwuzurike's dead body. This evidence was sufficient to enable the jury to conclude beyond a reasonable doubt that defendant burned Onwuzurike's body in violation of MCL 750.160. See *People v Williams*, 265 Mich App 68, 69-70; 692 NW2d 722 (2005).

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Kathleen Jansen