

STATE OF MICHIGAN
COURT OF APPEALS

In re S. A. D.

S. A. D.,

Petitioner-Appellee,

v

S. A. D.,

Respondent-Appellant.

UNPUBLISHED

July 23, 2019

No. 344335

Montcalm Circuit Court

LC No. 2017-022650-PP

Before: SAWYER, P.J., and BORRELLO and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals an order following a bench trial finding him in criminal contempt for violating a personal protection order (PPO). Respondent was sentenced to 40 days in jail, with credit for 2 days served. We affirm.

The parties were previously married and have two children together. In April 2017, the trial court entered a PPO against respondent prohibiting him from following, confronting, approaching, or appearing within the sight of petitioner. The PPO violation pertains to respondent's appearance at one of the children's baseball game in May 2018. At the bench trial, petitioner's case-in-chief provided substantial evidence of respondent's presence and actions at the game. Petitioner, petitioner's mother, petitioner's grandmother and the children's nanny all testified and identified respondent by name in discussing his actions. These witnesses did not, however, formally identify respondent in court. So respondent's counsel moved for a directed verdict of acquittal, arguing that petitioner failed to prove identity. The trial court took the motion under advisement and proceeded to respondent's witnesses. These witnesses identified respondent as being present at the game, and one of the witnesses formally identified respondent in court. Respondent also admitted a video into evidence that showed him at the game. The trial court then allowed petitioner to reopen proofs. Petitioner was recalled and formally identified respondent in court. The trial court denied respondent's motion for a directed verdict, and found that respondent violated the PPO by appearing within sight of the petitioner.

On appeal, respondent argues that the lack of a formal, in-court identification was fatal to petitioner's case-in-chief, and that the trial court was required to immediately grant his motion for acquittal, rather than reopening proofs and allowing petitioner to identify respondent in court on rebuttal. We disagree on both counts.¹

Contempt proceedings for PPO violations are governed by MCR 3.708. The petitioner or the prosecutor has the burden of proving criminal contempt beyond a reasonable doubt. MCR 3.708(H)(3). Identity is an element of every offense. *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008). "Identity may be shown by either direct testimony or circumstantial evidence which gives the jury an abiding conviction to a moral certainty that the accused was the perpetrator of the offense." *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967).

Respondent's assertion that a formalized in-court identification was required is contrary to the fact that elements of a crime, including identity, may be proven by circumstantial evidence and reasonable inferences. During petitioner's case-in-chief, four separate witnesses who were familiar with respondent identified him—by name—as having interacted with petitioner at the baseball game. This was sufficient evidence for a rational trier of fact to conclude that respondent violated the PPO. And although identity is an element of every offense, it is not always in dispute. This was not, for example, a criminal case where the defendant argued mistaken identification. Here, respondent did not dispute that he was the person identified by the witnesses as being on the scene. Everyone understood that the allegations and testimony pertained to respondent's actions at the game and that respondent was present in the courtroom. Requiring in-court identification was unnecessary under these circumstances. Accordingly, petitioner presented sufficient evidence in her case-in-chief for the trial court to find that respondent violated the PPO.

Alternatively, even if the case-in-chief evidence was insufficient to show identity, petitioner's counsel cured the deficiency when the trial court reopened proofs to allow petitioner to identify respondent as being present in the courtroom. We review a trial court's decision to reopen proofs for an abuse of discretion. *People v Keeth*, 193 Mich App 555, 560-561; 484 NW2d 761 (1992). "The relevant factors are whether any undue advantage would be taken by the party moving to reopen the proofs and whether there is any showing of surprise or prejudice to the nonmoving party." *Id.* at 560. In criminal proceedings,² while a motion for directed verdict of acquittal before a jury is limited to the evidence presented at the time of the motion,

¹ In reviewing a trial court's decision on a motion for a directed verdict, we review "the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).

² "Although criminal contempt is really only a 'quasi-crime,' criminal contempt proceedings encompass many of the same due process safeguards available to defendants charged with traditional crimes." *In re Auto Club Ins Ass'n*, 243 Mich App 697, 713; 624 NW2d 443 (2000) (footnote citation omitted).

MCR 6.419(B), that requirement is not found in the court rule governing motions for directed verdicts in a bench trial. See MCR 6.419(D).

The trial court did not abuse its discretion in reopening proofs. This case is substantially similar to *Keeth*, 193 Mich App at 561, in which the defendants moved for a directed verdict for the prosecution's failure to prove identity in a case alleging unlawful filling of wetlands. The trial court granted the prosecution's motion to reopen proofs, and we upheld that decision because "the prosecution had several witnesses who were available to testify regarding defendants' involvement" and "both defendants admitted that they owned the property and that they permitted the property to be filled." *Id.* This reasoning applies with full force to the present appeal. Petitioner had several witnesses familiar with respondent who testified to his involvement at the scene. Any one of these witnesses could have, and in fact did, testify regarding respondent's identity in a broader sense. Further, respondent does not deny being at the scene or violating the PPO, but rather argues that the prosecution had not technically identified him in court during the case-in-chief. For those reasons, respondent was neither surprised, nor prejudiced, by the court remedying the lack of in-court identification through the reopening of proofs.

Affirmed.

/s/ David H. Sawyer
/s/ Stephen L. Borrello
/s/ Douglas B. Shapiro