

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRIN McNEELY,

Defendant-Appellant.

UNPUBLISHED

October 1, 1996

No. 187846

LC No. 94-013611

Before: Reilly, P.J., and Sawyer and W.E. Collette,* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to life imprisonment for the armed robbery conviction and the mandatory five-year prison term for his second felony-firearm conviction. We affirm.

Defendant first asserts that the prosecution presented insufficient evidence to support his armed robbery and felony-firearm convictions. We disagree. The elements of armed robbery are: (1) an assault and (2) a felonious taking of property from the victim's person or presence while (3) the defendant is armed with a dangerous weapon. *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995). Since armed robbery is a specific intent crime, the prosecution must demonstrate that the defendant intended to permanently deprive the owner of property. *Id.* When there is more than one perpetrator, it is immaterial which one actually took possession of the victim's goods. *People v McGuire*, 39 Mich App 308, 315; 197 NW2d 469 (1972).

A conviction of felony-firearm requires that the prosecution prove, beyond a reasonable doubt, that the defendant possessed or carried a firearm during the commission or attempted commission of a felony. MCL 750.227b; MSA 28.424(2); *People v Williams*, 212 Mich App 607, 608; 538 NW2d 89 (1995). Possession may be actual or constructive and may be proved by circumstantial evidence. *Id.* at 609. Also, a felony-firearm conviction, as an aider and abettor, does not require that defendant

* Circuit judge, sitting on the Court of Appeals by assignment.

intended to commit the underlying felony. *People v Nix*, 165 Mich App 501, 505; 419 NW2d 7 (1987).

Viewing the evidence in the light most favorable to the prosecution, we conclude that there was sufficient evidence for a rational trier of fact to find that the essential elements of the crime were established beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). This conclusion is based on the prosecution witnesses' testimony that defendant and his three companions were the only customers in the club at the time of the shooting, that defendant had a gun in his possession when he entered the club, that defendant was inches away from the right side of the victim's face when the victim was shot in the right side of his face, and that two of defendant's companions were sitting on the other end of the bar when the victim was shot. Also, the victim could hear defendant talking to another man after the shooting as the men rifled through the victim's pockets and took his money and the only keys to the club's locked doors. Moreover, defendant admitted that he had a .357 handgun in his possession during the shooting incident, and the firearms identification expert testified that there were positively two different guns utilized in the shooting, one of which could have been a .357. Accordingly, the evidence presented at trial was sufficient to establish that defendant utilized a handgun to feloniously rob, steal and take money from the victim.

Defendant next argues that the trial court made no findings on defendant's actual role in perpetrating or assisting in the armed robbery and failed to address the requisite elements of armed robbery and felony-firearm. We disagree. In actions tried without a jury, the trial court must find the facts and state separately its conclusions of law as to contested matters. MCR 6.403; *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). Contrary to defendant's assertions, the court is not required to make specific findings of fact regarding each element of the crime. *Legg, supra*, 197 Mich App 134.

Following a review of the specific legal and factual issues raised by the parties and the evidence, we conclude that the trial court was aware of defendant's defense that he went to the after-hours club alone, that he did not participate in the shootings or robberies, and that he claimed to have saved the victim's life. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995); *Legg, supra*, 197 Mich 134. However, the court chose to disbelieve defendant's testimony and statements and found the victim's testimony credible. The court pointed out that the physical evidence established that the two victims were shot with two different weapons, even though defendant claimed that a single individual shot both men. The court concluded, beyond a reasonable doubt, that there was a plan to rob the after-hours club, that defendant was part of that plan, and that defendant possessed a firearm during the offense. It is apparent that the court was aware of the factual issues and it resolved the issues; since further explication would not facilitate appellate review, we need not remand. *Legg, supra*, 197 Mich App 134-135.

Finally, defendant maintains that he was denied his right to allocution and that his sentence violates the principle of proportionality. We disagree. Defendant was afforded his full right of allocution. *People v Reeves*, 143 Mich App 105, 107; 371 NW2d 488 (1985). Also, defendant's life sentence for the armed robbery conviction was within the sentencing guidelines' range of ten to twenty-

five years or life. Sentences within the guidelines' range are presumptively proportionate. *People v Cotton*, 209 Mich App 82, 85; 530 NW2d 495 (1995). Defendant has failed to raise any mitigating circumstances that would overcome the presumption of proportionality and demonstrate that the court abused its discretion in sentencing defendant. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Furthermore, the trial court's express reliance on the sentencing guidelines satisfied the articulation requirement. *People v Lawson*, 195 Mich App 76, 77; 489 NW2d 147 (1992).

Affirmed.

/s/ Maureen Pulte Reilly

/s/ David H. Sawyer

/s/ William E. Collette