STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROY EDWARD HARRINGTON,

Defendant-Appellant.

UNPUBLISHED
October 15, 1996

No. 181743
LC No. 93-009826

Before: Reilly, P.J., and White, and P.D. Schaefer,* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of assault with intent to murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to fifteen to forty-five years in prison for the assault with intent to murder conviction and two years for the felony firearm conviction, to be served consecutively. On appeal, defendant argues that the evidence was insufficient to support his conviction and that his sentence violated the principle of proportionality. We affirm.

On August 10, 1993, around 3:00 a.m., Gerald Hagler became the victim of a drive-by shooting in Inkster, near the corner of Pine and Henry. Hagler testified at trial that shots were fired at him from a car as he walked down the street. Hagler was unable to see the occupants of the car. He saw one gun being fired from the passenger side of the car. He saw "fire" coming from two locations of the car, "like the front and the back." He heard two different sounds of gunshots. An eyewitness acquainted with defendant and codefendant Dwayne Edward Jones testified that he saw them in the car. Defendant was in the front passenger seat, and codefendant was in the back seat on the passenger side. The witness did not recognize the driver. The witness testified that he saw the car at the corner of Henry and Pine, heard shots, and saw the muzzle flash from the front and back seat of the passenger side of the car. The witness gave the police the license plate number of the car. It was traced to

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

defendant's mother. A search of the car produced shell casings on the floor of the back seat, on both the passenger and driver side.

Defendant claims that the evidence was insufficient to establish that he fired a gun at Hagler. We review a challenge to the sufficiency of the evidence at a bench trial by viewing the evidence presented in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993). Resolving credibility disputes is within the exclusive province of the trier of fact. *People v Herbert*, 444 Mich 466, 474; 511 NW2d 654 (1993); *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime. *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). The eyewitness testified that he saw defendant seated in the passenger side of the front seat of the car moments before the shooting, and that he saw gunfire come from both the front and back seats of the passenger side of the car. This evidence was corroborated by Hagler's testimony that he heard two different guns. A rational trier of fact could infer from this testimony that the passenger side occupants in both the front and rear seats, e.g. defendant and codefendant, both fired guns at Hagler. The evidence was therefore sufficient to support the court's verdict.

Defendant argues that the eyewitness was not credible because he viewed the incident in darkness and because he was biased against defendant. These arguments raise questions of credibility. The resolution of credibility disputes is within the exclusive province of the trier of fact. *Vaughn*, *supra*. Therefore, defendant is not entitled to relief on this basis. Defendant also argues that the prosecutor should be bound by his statement in opening argument that there was only one gun fired during the assault. Our review of the record indicates that the prosecutor's statement relied on by defendant, "well he could see only one gun shooting out of the car," referred only to Hagler's inability to see a second gun. Contrary to defendant's argument, this was not an admission that there was only one gun.

Defendant claims that his sentence, at the highest end of the sentencing guidelines, violates the principle of proportionality. The guidelines range was eighty-four to 180 months. Sentences within the guidelines are presumed proportionate unless unusual circumstances are present. *People v Harrington*, 194 Mich App 424, 431; 487 NW2d 479 (1992). A sentence should be proportionate to the seriousness of the offense, taking into account "the nature of the offense and the background of the offender." *People v Milbourn*, 435 Mich 630, 651; 461 NW2d 1 (1990). A sentence falling within the guidelines range may violate the principle of proportionality in unusual circumstances. *Harrington*, *supra*.

Defendant claims that unusual circumstances warrant a lighter sentence. The unusual circumstances upon which defendant relies are a history of child abuse, special education and diabetes. Defendant also claims that he is entitled to leniency because he testified for the prosecution in a murder case. However, the assault in this case was brutal and completely unprovoked. Furthermore, defendant has a history of anti-social behavior starting at the age of fourteen. Under these

circumstances, the nature of the offense and the background of the offender justified the sentence. *Milbourn, supra*. Furthermore, the trial court adequately articulated its reasons for imposing the sentence by referring to the guidelines, *People v Broden*, 428 Mich 343; 408 NW2d 789 (1987), as well as by discussing defendant's criminal record and the seriousness of the injury.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Helene N. White
/s/ Philip D. Schaefer