

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY ROBERT GEVEDON,

Defendant-Appellant.

UNPUBLISHED

May 12, 2009

No. 284650

Wayne Circuit Court

LC No. 07-024798-FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY ROBERT GEVEDON,

Defendant-Appellant.

No. 284651

Wayne Circuit Court

LC No. 07-024797-FC

Before: Sawyer, P.J., and Murray and Stephens, JJ.

PER CURIAM.

In these consolidated appeals, defendant challenges his jury convictions of two counts of armed robbery, MCL 750.529, in Wayne Circuit Court Docket No. 07-024797-FC (Docket No. 284650), and one count of armed robbery in Wayne Circuit Court Docket No. 07-024798-FC (Docket No. 284651), and the sentences imposed thereon. Defendant was sentenced to concurrent terms of ten years, six months to 20 years in prison. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that there was insufficient evidence to identify him as the robber in both robberies. One victim from each robbery originally picked him out of a photographic lineup and then positively identified him at trial, but defendant maintains that minor inconsistencies rendered their testimony incredible. The discrepancies pertained to variations in the description of defendant's skin as light, medium, and brown, and in the failure to originally mention to police that his eyebrows were distinctive. Defendant also maintains that one victim's

claim that there was sufficient light to see was contradicted by another witness. Defendant also points to the absence of corroborating fingerprint evidence.

“[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a 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 Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended on other grounds 441 Mich 1201 (1992).

[An appellate court] must remember that the jury is the sole judge of the facts. It is the function of the jury alone to listen to testimony, weigh the evidence and decide the questions of fact. . . . 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. [*Id.* at 514-515, quoting *People v Palmer*, 392 Mich 370, 375-376; 220 NW2d 393 (1974).]

We conclude that the eyewitness testimony was compelling. However, any perceived discrepancies or weaknesses in the evidence went to the credibility of the eyewitnesses. This determination was for the jury.

Defendant notes that the jury acquitted him of a charge of possession of a firearm during the commission of a felony, MCL 750.227b, as well as charges of armed robbery of two other victims. He claims these verdicts were indicative of a lack of proof beyond a reasonable doubt with regard to the offenses for which he was convicted. However,

[j]uries are not held to any rules of logic nor are they required to explain their decisions. The ability to convict or acquit another individual of a crime is a grave responsibility and an awesome power. An element of this power is the jury’s capacity for leniency. Since we are unable to know just how the jurors reached their conclusion, whether the result of compassion or compromise, it is unrealistic to believe that a jury would intend that an acquittal on one count and conviction on another would serve as the reason for defendant’s release. [*People v Vaughn*, 409 Mich 463, 466; 295 NW2d 354 (1980)].

Accordingly, we do not attach any significance to the acquittals.

Defendant next argues that his minimum sentence of ten years, six months was cruel and unusual punishment. He acknowledges that the sentence was within the guidelines range of 126 to 210 months. In *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008), this Court stated:

Although MCL 769.34(10) provides that a sentence within the guidelines range must be affirmed on appeal unless the trial court erred in scoring the guidelines or relied on inaccurate information, this limitation on review is not applicable to claims of constitutional error. *People v Conley*, 270 Mich App 301, 316; 715 NW2d 377 (2006). However, a sentence within the guidelines range is presumptively proportionate, *People v Broden*, 428 Mich 343, 354-355; 408

NW2d 789 (1987), and a sentence that is proportionate is not cruel or unusual punishment, *People v Drohan*, 264 Mich App 77, 92; 689 NW2d 750 (2004) [, affirmed 475 Mich 140 (2006)].

Defendant argues that his age (19 at the time of sentencing), his prior record, and the questionable evidence in this case render the sentence disproportionate. However, as previously concluded, there was no deficiency in the evidence. Moreover, defendant's prior record is not innocuous. He had prior misdemeanor convictions for aggravated assault, and prior felony convictions for receiving and concealing stolen vehicles. Given these facts, defendant cannot overcome any presumption of proportionality.

Affirmed.

/s/ David H. Sawyer
/s/ Christopher M. Murray
/s/ Cynthia Diane Stephens