

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES HAWKINS,

Defendant-Appellant.

UNPUBLISHED

February 25, 2010

No. 289181

Wayne Circuit Court

LC No. 08-008911-FC

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317, felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as a third-habitual offender, MCL 769.11, to concurrent prison terms of 50 to 75 years for the second-degree murder conviction, and six to ten years each for the felon in possession and CCW convictions, and a consecutive two-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. Sufficiency of the Evidence

Defendant argues through both appellate counsel and in a pro se supplemental brief that the evidence was insufficient to prove the requisite intent for second-degree murder, or to rebut his claim of self-defense. We disagree. In reviewing a challenge to the sufficiency of the evidence, we review de novo the evidence in a 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 Harrison*, 283 Mich App 374, 377-378; 768 NW2d 98 (2009). Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

To establish second-degree murder, the prosecution must prove: (1) a death, (2) that the death was caused by an act of the defendant, (3) that the defendant acted with malice, and (4) the defendant did not have a lawful justification or excuse. *People v Smith*, 478 Mich 64, 70; 731 NW2d 411 (2007). The intent, or malice, necessary to support a conviction of second-degree murder is described in *People v Roper*, 286 Mich App 77, 84; ___ NW2d ___ (2009), as follows:

“Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm.” Malice may be “inferred from evidence that the defendant ‘intentionally set in motion a force likely to cause death or great bodily harm.’” “The offense of second-degree murder does not require an actual intent to harm or kill, but only the intent to do an act that is in obvious disregard of life-endangering consequences.” [*Id.* at 84 (citations omitted).]

Intent may be inferred from all the facts and circumstances. *Kanaan, supra* at 622. “Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt.” *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

Several witnesses testified that defendant shot at the victim with a large caliber gun as the victim ran toward his house. Many of the witnesses were in close proximity to the victim when defendant shot at him. According to several witnesses, defendant continued to follow the victim and aimed at him again before firing a second shot. The jury could reasonably infer that defendant’s act of firing a large caliber gun at the victim under these circumstances represented an obvious disregard of life-endangering consequences. Further, although defendant presented witnesses who claimed that defendant produced his gun after seeing the victim reach for a gun, several other witnesses testified that defendant was the only person who had a gun, and that the victim did not motion like he had a gun before he was shot. “The credibility of witnesses and the weight accorded to evidence are questions for the jury, and any conflict in the evidence must be resolved in the prosecutor’s favor.” *Harrison, supra* at 378. Therefore, viewed in the light most favorable to the prosecution, the evidence was sufficient to establish defendant’s intent to commit second-degree murder, and to disprove defendant’s claim of self-defense, beyond a reasonable doubt.

II. Ineffective Assistance of Counsel

In his pro se supplemental brief, defendant also argues that trial counsel was ineffective for not investigating or presenting evidence regarding the possibility that the victim may have lived had he or others acted differently after he was shot. Because defendant did not raise an ineffective assistance of counsel claim in the trial court, review is limited to mistakes apparent on the record. *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007). To establish ineffective assistance of counsel, a defendant must show that counsel’s deficient performance denied him the Sixth Amendment right to counsel and there was a reasonable probability that, but for counsel’s errors, the result of the proceedings would have been different. *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007). The failure to present evidence can constitute ineffective assistance of counsel only when it deprives the defendant of a substantial defense. *People v Hyland*, 212 Mich App 701, 710; 538 NW2d 465 (1995), vacated in part on other grounds 453 Mich 902 (1996). A substantial defense is one that might have made a difference in the outcome of the trial. *Id.*

Although defendant’s argument is not clearly presented, he seems to suggest that defense counsel should have consulted a medical expert to determine whether the victim would have died if he had not paced back and forth after he was shot. This argument implicates the causation element of murder. As indicated previously, causation is an essential element of second-degree

murder. *Smith*, 478 Mich at 70. The causation element is comprised of two components: factual cause and proximate cause. *People v Schaefer*, 473 Mich 418, 435; 703 NW2d 774 (2005), overruled in part on other grounds in *People v Derror*, 475 Mich 316, 334; 715 NW2d 822 (2006). Here, defendant's argument does not implicate the factual cause component of causation. That is, defendant does not challenge the evidence that he shot the victim in the leg, striking the victim's femoral artery, nor does he dispute that this act resulted in the victim's death, i.e., that the victim would not have died but for being shot in the leg. See *Schaefer*, *supra* at 435-436. Instead, defendant's argument implicates the proximate cause component of causation. Defendant contends that defense counsel was ineffective for failing to present evidence that conduct by the victim or others after the victim was shot somehow aided in the victim's death. In *Schaefer*, the Court explained:

For a defendant's conduct to be regarded as a proximate cause, the victim's injury must be a "direct and natural result" of the defendant's actions. In making this determination, it is necessary to examine whether there was an intervening cause that superseded the defendant's conduct such that the causal link between the defendant's conduct and the victim's injury was broken. If an intervening cause did indeed *supersede* the defendant's act as a legally significant causal factor, then the defendant's conduct will not be deemed a proximate cause of the victim's injury.

The standard by which to gauge whether an intervening cause supersedes, and thus severs the causal link, is generally one of reasonable foreseeability. For example, suppose that a defendant stabs a victim and the victim is then taken to a nearby hospital for treatment. If the physician is negligent in providing medical care to the victim and the victim later dies, the defendant is still considered to have proximately caused the victim's death because it is reasonably foreseeable that negligent medical care might be provided. At the same time, *gross* negligence or intentional misconduct by a treating physician is not reasonably foreseeable, and would thus break the causal chain between the defendant and the victim.

The linchpin in the superseding cause analysis, therefore, is whether the intervening cause was foreseeable based on an objective standard of reasonableness. If it was reasonably foreseeable, then the defendant's conduct will be considered a proximate cause. If, however, the intervening act by the victim or a third party was not reasonably foreseeable—e.g., *gross* negligence or intentional misconduct—then generally the causal link is severed and the defendant's conduct is not regarded as a proximate cause of the victim's injury or death. [*Id.* at 436-438 (footnotes omitted).]

In this case, defendant has not identified any conduct or event that might qualify as an intervening, superseding cause that would sever the causal link between defendant's conduct and the victim's death. The only act or event that defendant alludes to in his brief is the victim's conduct of pacing back and forth after he was shot. This involves ordinary, foreseeable conduct; it does not rise to a level that it could be considered either gross negligence or misconduct that would constitute a superseding event. *Id.* at 438-439. Defendant does not identify any other act or event involving either the victim or a third party that he contends might qualify as an

intervening, superseding event. Because defendant has failed to show the existence of an act or event that might qualify as a possible superseding cause of the victim's death, there is no basis for concluding that defense counsel performed deficiently by failing to investigate or present evidence on this issue.

Furthermore, even if the victim's conduct of pacing back and forth could be considered a possible superseding event, defendant has not offered any evidence that this conduct actually had any contributory effect on the victim's death. The burden is on defendant to produce factual support for his claim of ineffective assistance of counsel. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). Because defendant has not provided any factual support for his claim that the victim's act of pacing contributed to his death, he has not shown that he was prejudiced by defense counsel's failure to investigate or present evidence on this issue.

For these reasons, defendant's ineffective assistance of counsel claim cannot succeed.

III. Sentencing

Lastly, defendant's appellate attorney argues that even though defendant was sentenced within the appropriate sentencing guidelines range, his sentences for second-degree murder and felony-firearm constitute cruel or unusual punishment under US Const, Am VIII, and Const 1963, art 1, § 16, because they are effectively a life sentence given his age.¹ We disagree. A sentence within the appropriate guidelines range is presumptively proportionate, and a proportionate sentence is not cruel or unusual punishment. *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008). Defendant has not demonstrated any unusual circumstances to overcome the presumptive proportionality of his sentences. Neither the mere fact that defendant committed his crimes at an older age and, as such, may spend the remainder of his life in prison, nor the consecutive nature of his sentences render them disproportionate. See *People v Lemons*, 454 Mich 234, 258-259; 562 NW2d 447 (1997), *People v Miles*, 454 Mich 90, 95; 559 NW2d 299 (1997), and *People v Merriweather*, 447 Mich 799, 809-811; 527 NW2d 460 (1994). Thus, defendant's sentences do not constitute cruel or unusual punishment.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Mark J. Cavanagh

/s/ Alton T. Davis

¹ "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 Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008).