

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
August 21, 2014

V  
LOGAN JOSEPH SIMMONS-JONES,  
Defendant-Appellant.

No. 315813  
Oakland Circuit Court  
LC No. 2012-242823-FC

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Before: RIORDAN, P.J., and DONOFRIO and, BOONSTRA JJ.

PER CURIAM.

A jury convicted defendant of assault with intent to commit murder, MCL 750.83, felon in possession of a firearm, MCL 750.224f, and two counts of possession of a firearm during the commission of a felony (second offense), MCL 750.227b(1). The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 15 to 40 years for the assault conviction and 2 to 20 years for the felon-in-possession conviction, to be served consecutive to concurrent prison terms of five years each for the felony-firearm convictions. We affirm.

Defendant's convictions arise from the July 25, 2012, shooting assault of McKinley Breckenridge in the city of Pontiac. The testimony at trial indicated that two different gunmen were involved in the assault. The principal issue at trial was defendant's identity as one of the gunmen.

I. SUFFICIENT EVIDENCE OF DEFENDANT'S IDENTITY

Defendant argues on appeal that there was insufficient evidence to establish his identity as one of the gunman involved in the shooting assault of Breckenridge. We disagree. A claim of insufficient evidence is reviewed de novo by reviewing the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find beyond a reasonable doubt that the defendant committed the charged crimes. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012). Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999); *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). It is for the trier of fact rather than this Court to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *People v Dunigan*, 299 Mich App 579, 582; 831 NW2d 243 (2013). This Court will not interfere

with the fact finder's role of determining the weight of evidence or the credibility of witnesses. *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012). Identity is an element of every offense. *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008). The prosecution must prove the identity of the defendant as the perpetrator of the charged offense beyond a reasonable doubt. *People v Kearn*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967).

The evidence at trial indicated that Breckenridge was shot as he was walking through an apartment complex parking lot. Breckenridge's testimony, that the shots came from two different directions and that the shots sounded differently, supported an inference that two different gunmen were involved. Breckenridge testified that one gunman was a black male wearing a black shirt, but he could not see the second gunman.

Shortly after the shooting, the police observed two black males approximately half a mile from the shooting location. When the police approached the two men, they fled on foot. One suspect was wearing all black. The police pursued the suspects and discovered defendant lying on the roof of a shed next to an air conditioning unit. A semi-automatic firearm was discovered lying on the ground near the air conditioning unit, and a firearms examiner determined that shell casings found at the shooting scene were fired from that gun. Defendant later gave a statement to the police in which he admitted that he ran from the police, although he claimed that he did so only because he thought he had outstanding warrants and because he had been smoking marijuana.

The jury could reasonably find from defendant's statement that he was one of the two men who were observed in the vicinity of the shooting scene shortly after the shooting, and who fled when approached by the police. The jury was permitted to infer from this evidence that defendant fled because of his consciousness of guilt for the shooting assault of Breckenridge. *People v Unger*, 278 Mich App 210, 226; 749 NW2d 272 (2008). Although defendant gave an explanation for his flight that was consistent with a claim of innocence for the charged offenses, the jury was not required to accept that explanation. It could have reasonably found that the explanation was not credible, especially where the police determined that defendant did not have any outstanding warrants and found no evidence to suggest that he was smoking marijuana, as defendant had claimed to the police. Defendant also was linked to the charged shooting offense by the discovery of the firearm on the ground near where he was found attempting to hide from the police, and the firearm examiner's testimony that shell casings found at the shooting scene were fired from that gun. According to a police officer, dirt on the frame of the gun was consistent with it having been thrown on the ground. In addition, two cell phones were found in defendant's possession at the time of his arrest, and pursuant to a search warrant, they were examined. They contained photos of a firearm similar to the one recovered by the police. As a result, the jury could reasonably infer from all the evidence that the recovered gun was used in the shooting assault of Breckenridge, and that it belonged to defendant, who threw it to the ground when he attempted to hide on top of the shed. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable the jury to find beyond a reasonable doubt that defendant committed the charged crimes.

## II. CRUEL OR UNUSUAL PUNISHMENT

Defendant next argues that his 15-year minimum sentence for his assault with intent to commit murder conviction is unconstitutionally cruel or unusual. Because defendant never raised this constitutional issue at the trial court, it is not preserved for appellate review. *People v Hogan*, 225 Mich App 431, 438; 571 NW2d 737 (1997). We review unpreserved constitutional issues for plain error affecting substantial rights. *People v Kimble*, 470 Mich 305, 312; 684 NW2d 669 (2004).

Defendant's 15-year minimum sentence is well within the applicable sentencing guidelines range of 126 to 420 months, as enhanced for defendant's fourth habitual offender status. Although MCL 769.34(10) provides that a sentence within the guidelines range must be affirmed on appeal absent an error in the scoring of the guidelines or reliance on inaccurate information in determining the sentence, this limitation on review is not applicable to claims of constitutional error. *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008). But a sentence within the guidelines range is presumed to be proportionate, and a proportionate sentence is not cruel or unusual punishment. *Id.* In order to overcome the presumption that a sentence within the guidelines range is proportionate, the defendant must present unusual circumstances that would render the presumptively proportionate sentence disproportionate. *People v Bowling*, 299 Mich App 552, 558; 830 NW2d 800 (2013).

None of defendant's arguments is sufficient to overcome the presumption of proportionality. First, defendant argues that his sentence is cruel or unusual because it is required to be served consecutive to his felony-firearm sentences. However, when consecutive sentences are proportionate standing alone, their consecutive nature will not render them excessive. *People v St John*, 230 Mich App 644, 649; 585 NW2d 849 (1998). Rather, the inquiry is whether *each* sentence is proportionate. *Id.* Here, the sentence for the assault conviction was within the guidelines, and defendant's five-year sentences for his felony-firearm convictions were legislatively mandated, MCL 750.227b(1). Thus, these sentences are not subject to general proportionality challenges. *Powell*, 278 Mich App at 323.

We also reject defendant's argument that his sentence for assault with intent to commit murder is cruel or unusual because his conviction for that offense was based on insufficient evidence. If evidence is legally insufficient to support a conviction, the remedy is to vacate that conviction, not mitigate any sentence imposed for that conviction. *Id.* at 318. Regardless, as previously discussed, there was sufficient evidence to support defendant's convictions.

Defendant also argues that his sentences are cruel or unusual because of his age, but he fails to explain why that factor should be considered unusual or why it renders his sentence disproportionate. Defendant's age, 20 years old on the date of the offense, is insufficient to overcome the presumptive proportionality of his sentence, especially considering his prior criminal record and the gravity of the offense. Defendant has a juvenile history involving adjudications for assault and battery and third-degree retail fraud, and prior adult convictions for carrying a concealed weapon, delivery of marijuana, and felony-firearm. He committed the instant offenses approximately four months after being released from prison after serving his prior felony-firearm sentence. The offenses involved defendant and an accomplice targeting and shooting an unarmed victim who had not been threatening them. The victim was only injured, but easily could have been killed considering the number of shots that were fired. Defendant's past criminal record and the seriousness of his actions establish a pattern of violence and

disregard for others that fail to overcome the presumptive proportionality of his sentence. Finally, defendant offers no argument or evidence that his sentence is abnormally harsh in comparison to penalties imposed for other crimes in this state, or for the same crimes in other states. *Bowling*, 299 Mich App at 559. Because defendant has not overcome the presumptive proportionality of his sentence, we reject his claim that his sentence is cruel or unusual.

Affirmed.

/s/ Michael J. Riordan

/s/ Pat M. Donofrio

/s/ Mark T. Boonstra