

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
October 23, 2014

v

JERELL CHANEY JOHNSON,
Defendant-Appellant.

No. 317246
Wayne Circuit Court
LC No. 12-005279-FC

Before: FITZGERALD, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of second-degree murder, MCL 750.317, assault with intent to do great bodily harm less than murder, MCL 750.84, felon in possession of a firearm (felon-in-possession), MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced as a second-offense habitual offender, MCL 769.10, to concurrent terms of 40 to 80 years' imprisonment for the second-degree murder conviction, four to ten years' imprisonment for the assault with intent to do great bodily harm conviction, and two to five years' imprisonment for the felon-in-possession conviction, and to a consecutive term of two years' imprisonment for the felony-firearm conviction. We affirm defendant's convictions and sentences.

Defendant first argues that he was denied his right to due process because the evidence of his identity was not sufficient to support the jury's verdicts. We disagree. In a criminal case, due process requires that the prosecution introduce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999). We review the evidence de novo, in the light most favorable to the prosecution, to determine if a rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992).

Defendant argues that the testimony of the witnesses who identified him as the shooter was contradictory, inconsistent, unreliable, and not credible. Identity is an essential element of every crime that must be proven beyond a reasonable doubt. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976); *People v Yost*, 278 Mich App 341, 356; 749 NW2d 735 (2008). Identity may be established by circumstantial evidence and reasonable inferences drawn from the evidence. *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999). "[T]his Court has

stated that positive identification by witnesses may be sufficient to support a conviction of a crime.” *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000).

In this case, the surviving victim positively identified defendant. The evidence shows that the shooter stood directly over the surviving victim when he aimed the gun at his head and shot him a second time, and the victim had a clear look at the shooter’s face. While the record does indicate some inconsistencies in defendant’s and the other witnesses’ statements, there was also evidence that the witnesses were panicky, angry, sorrowful, and in severe emotional states when some of the initial statements were given immediately after the shooting and that defendant and his family had threatened several of the witnesses, including the surviving victim. The jury was free to believe or disbelieve, in whole or in part, any of the evidence. *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999). It was the jury’s job to assess the credibility of the witnesses, *People v Lemmon*, 456 Mich 625, 647; 576 NW2d 129 (1998), and “to determine the weight to be accorded any inferences,” *People v Dunigan*, 299 Mich App 579, 582; 831 NW2d 243 (2013). The jury had sufficient evidence to conclude that any inconsistencies in the testimony were the result of the witnesses either being threatened or being in an emotional state that made it difficult to give accurate recollections. “The credibility of identification testimony is a question for the trier of fact that we do not resolve anew.” *Davis*, 241 Mich App at 700. Viewing the evidence in the light most favorable to the prosecutor, we find that the evidence was sufficient to determine that a rational trier of fact could find that the element of identity was proven beyond a reasonable doubt. Accordingly, we conclude that defendant was not denied his right to due process.

Next, defendant argues that his sentence of 40 to 80 years’ imprisonment was cruel and unusual because it violated the principle of proportionality. We disagree. We review this unpreserved claim of error for plain error affecting the defendant’s substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Defendant’s recommended minimum sentence range for his second-degree murder conviction was 270 to 450 months’ imprisonment, and this is reflected on the sentencing information report. However, at the sentencing hearing, it was brought to the trial court’s attention that defendant was a second-offense habitual offender, thus changing the upper limit of the minimum sentence range to 562.5 months. See MCL 777.21 (3)(a) (directing the trial court to increase the upper limit of the recommended minimum sentence range by 25 percent for second-offense habitual offenders). Both the prosecutor and defense counsel agreed and no objections were made to defendant’s scoring guidelines. Therefore, based on defendant’s status as a second-offense habitual offender, his minimum sentence of 40 years’ (480 months) imprisonment was well within his recommended minimum sentence range, and is presumptively proportionate. *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008). Absent an error in scoring the sentencing guidelines or inaccurate information relied upon to determine the defendant’s sentence, this Court must affirm a minimum sentence within the recommended minimum sentence range. MCL 769.34(10).

Nevertheless, defendant argues that his sentence was cruel and unusual because it was not proportionate to his prior history. A criminal defendant has the right to a sentence that is proportionate to the seriousness of the circumstances surrounding the offense and the offender, and trial court may depart from the sentencing guidelines if it determines that the guidelines

range is not proportionate to the seriousness of the offense and the offender. *People v Babcock*, 469 Mich 247, 264; 666 NW2d 231 (2003). While defendant may not have had an extensive history of violent crimes, and may have had a good relationship with his family, these facts cannot overcome the seriousness of the circumstances surrounding this case. The facts and circumstances of the offenses defendant committed demonstrate a wanton disregard for the lives of others, a violent and unprovoked execution of one person, and a vicious attempt to murder a second person. Therefore, defendant has not shown how his sentence, which was within the guidelines range, was not proportionate to the offense and the offender, and has failed to overcome the presumption of proportionality. Accordingly, defendant has not established a constitutional violation.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Donald S. Owens