

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
November 20, 2014

v

RAYMOND EARL HOBBS,  
Defendant-Appellant.

No. 318014  
Wayne Circuit Court  
LC No. 13-003035-FC

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Before: BORRELLO, P.J., and WILDER and STEPHENS, 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 possession of a firearm during the commission of a felony (second offense), MCL 750.227b. The trial court sentenced defendant to concurrent prison terms of 23 to 40 years for the assault conviction and 6 to 10 years for the felon-in-possession conviction, to be served consecutive to a five-year term of imprisonment for the felony-firearm conviction, and consecutive to a prior parole sentence for armed robbery. Defendant appeals as of right. We affirm.

Defendant's convictions arise from the shooting assault of Steven Holt on the evening of March 14, 2013. Defendant admitted shooting Holt, but claimed that he acted in self-defense after Holt came after him with a knife.

I. SUFFICIENCY OF THE EVIDENCE

Defendant argues that the evidence was insufficient to support his convictions because the prosecution failed to prove that he did not act in self-defense beyond a reasonable doubt. 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 the defendant guilty beyond a reasonable doubt. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012). The trier of fact properly may consider circumstantial evidence and any reasonable inferences that arise from that evidence. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999); *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). This Court will not interfere

with the fact-finder's role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012).

Defendant was charged with assault with intent to commit murder and two weapons offenses. The elements of assault with intent to commit murder are “(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder.” *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). “The intent to kill may be proved by inference from any facts in evidence,” *People v Jackson*, 292 Mich App 583, 588; 808 NW2d 541 (2011), and minimal circumstantial evidence of intent to kill is sufficient. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). “The use of a lethal weapon will support an inference of an intent to kill.” *People v Ray*, 56 Mich App 610; 615; 224 NW2d 735 (1974). The evidence that defendant shot Holt three times with a gun was sufficient to enable the jury to find beyond a reasonable doubt that defendant assaulted Holt with the intent to kill him, and to also find that defendant was guilty of the two weapons offenses. Defendant argues, however, that the evidence showed that he acted in self-defense, thereby legally excusing his conduct. When a person acts in self-defense, his actions are excused and he is not guilty of any crime. *People v Heflin*, 434 Mich 482, 510; 456 NW2d 10 (1990).

Once a defendant presents evidence of self-defense, the prosecution bears the burden of disproving it beyond a reasonable doubt. *People v Dupree*, 486 Mich 693, 710; 788 NW2d 399 (2010). Michigan's Self-Defense Act (“SDA”), MCL 780.971 *et seq.*, “codified the circumstances in which a person may use deadly force . . . .” *Dupree*, 486 Mich at 708. “[T]he SDA continues to require that a person have an honest and reasonable belief that there is a danger of death, great bodily harm, or a sexual assault in order to justify the use of deadly force.” *People v Guajardo*, 300 Mich App 26, 35-36; 832 NW2d 409 (2013). MCL 780.972(1) provides, in relevant part:

(1) An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if either of the following applies:

(a) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual.

(b) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent sexual assault of himself or herself or of another individual.

In this case, the jury heard testimony that defendant intentionally bumped Holt as he was leaving Holt's house, and then turned around and punched Holt in the jaw. Witnesses testified that Holt did not want to fight and did not retaliate after being punched by defendant. Holt did pull a pocketknife out of his pocket, but testified that he never opened it or threatened defendant with it. The jury received testimony that Holt was inside his home and defendant was outside the home on the front porch, with a closed door separating the two of them, when Holt pulled out the

knife. Defendant admitted that he was angry, wanted to fight, and did not leave the premises. Holt testified that he was holding the door shut from inside the home, trying to prevent defendant from re-entering the house, when defendant obtained a weapon and fired it in his direction. Holt testified that he opened the door and tried to grab the weapon, which led to a struggle during which both men fell off the porch. According to Holt, defendant fired two more shots, and after Holt complained that he had been shot, defendant fired an additional two shots. Holt was struck by three bullets. Holt repudiated defendant's self defense argument that he charged defendant with an open knife. Holt's pocketknife was later found on the ground outside, in the closed position.

Defendant's self-defense claim was premised on his account of the circumstances surrounding the offense. Defendant admitted he possessed a firearm, but claimed that he never produced it until after Holt came charging at him with an open knife, and that he fired the gun only to protect himself from the knife attack. Although this testimony supported a self-defense claim, the jury was not required to credit defendant's testimony. Rather, the credibility of defendant's account was up to the jury to decide. *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009). This Court will not interfere with the fact-finder's role of determining the credibility of witnesses. *Eisen*, 296 Mich App at 331.

Viewed in a light most favorable to the prosecution, the jury could reasonably infer from the testimony that defendant did not honestly and reasonably believe that Holt was a threat to him.

## II. CRUEL OR UNUSUAL PUNISHMENT

Defendant next argues that his 23-year minimum sentence for his assault with intent to commit murder conviction is unconstitutionally cruel or unusual. Because defendant never raised this constitutional issue in 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 23-year minimum sentence is well within the applicable sentencing guidelines range of 171 to 427 months, as enhanced for defendant's third habitual offender status. "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). 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 the sentence is proportionate, 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 are sufficient to overcome the presumption of proportionality. Defendant principally contends that his sentence should be deemed cruel or

unusual because it will be served consecutive to a prior parole sentence for armed robbery and consecutive to his felony-firearm sentence. 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, defendant's sentence for the assault conviction is well within the guidelines range for that offense, and defendant's five-year sentence for his second felony-firearm conviction is legally mandated. MCL 750.227b(1). Defendant's prior armed robbery sentence is not before this Court, and thus is not subject to a proportionality challenge in this appeal.<sup>1</sup> However, defendant's sentences for the instant offenses were required to be served consecutive to the prior armed robbery sentence pursuant to MCL 768.7a(2). The consecutive nature of the sentences does not render them cruel or unusual.

Defendant also asserts that his sentence is cruel or unusual because of the "questionable reliability" of his conviction, suggesting that it 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 the conviction. *Powell*, 278 Mich App at 318. Regardless, as previously discussed, the evidence was sufficient to support defendant's convictions.

Defendant also suggests that his sentences are cruel or unusual because of his age, 37, but he fails to explain why that factor should be considered unusual, or why it renders his sentence disproportionate. Defendant was subject to an enhanced sentence because of his third habitual offender status. Because defendant has not presented any unusual circumstances that render his sentence disproportionate, we reject defendant's claim that his sentence is cruel or unusual.

Affirmed.

/s/ Stephen L. Borrello  
/s/ Kurtis T. Wilder  
/s/ Cynthia Diane Stephens

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<sup>1</sup> Defendant was sentenced on November 7, 1994, to a prison term of 2 to 20 years for armed robbery. He committed the instant offenses while on parole for that offense.