

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVIE BRIDGEMAN,

Defendant-Appellant.

UNPUBLISHED

September 26, 1997

No. 196808

Recorder's Court

LC No. 95-010703

Before: Markey, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals by right his jury convictions of assault with intent to murder, MCL 750.83; MSA 28.278, and felony firearm, MCL 750.227b; MSA 28.424(2), and resulting sentences of 15 to 25 years and 2 years, respectively. This case is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Defendant first contends that the trial court erred in refusing to accede to the jury's request for the re-reading of the testimony of three witnesses. The trial court indicated to the jury that, in light of the fact that the trial lasted only two days, it could see little justification for re-reading the entire testimony of these witnesses, when in all likelihood the jury had internal disagreement only as to particular aspects of the testimony of these witnesses. The court was in the process of advising the jury to reformulate its request to either focus more specifically on disputed portions of the testimony, or to insist that the entire testimony be re-read because the disagreement extended to that level, when several jurors interrupted to advise that the disagreement which had prompted the note to the judge had already been resolved before the bailiff had brought the jury back into the courtroom. No other jurors, despite the trial court's questioning, and acknowledgment that it was not intending to prevent a re-reading of testimony, indicated a desire to have any of the testimony re-read. No abuse of the trial court's discretion has been established on this record. *People v Howe*, 392 Mich 670, 676-678; 221 NW2d 350 (1974).

Defendant's next issue concerns the scoring of 100 points for offense variable 2 by the trial court. Defendant claims that because he was acquitted of the charge of murdering Kyian Cooper, the scoring is inconsistent with the jury's verdict. First, on this record, defendant has failed to present the

type of scoring decision that can provide a cognizable basis for appellate relief. *People v Mitchell*, 454 Mich 145, 177; 560 NW2d 600 (1997). In any event, defendant's acquittal of the murder charge, which reflects only a reasonable doubt concerning his guilt, does not preclude this scoring decision based on a preponderance of the evidence. *People v Purcell*, 174 Mich App 126, 130-131; 435 NW2d 782 (1989); *People v Granderson*, 212 Mich App 673; 538 NW2d 471 (1995).

Finally, defendant argues that his 15 to 25 year sentence is disproportionate to the offense and the offender. However, because the sentence is within the guideline range, it is presumptively proportionate, and defendant has failed to overcome that presumption. *People v Eberhardt*, 205 Mich App 587; 518 NW2d 511 (1994). Given the actions of defendant underlying the convictions, a 15 to 25 year sentence is not, on the defendant's appeal, disproportionate. *People v Shavers*, 448 Mich 389; 531 NW2d 165 (1995).

Affirmed.

/s/ Jane E. Markey

/s/ Janet T. Neff

/s/ Michael R. Smolenski