

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TRACEY THURMOND,

Defendant-Appellant.

UNPUBLISHED

October 21, 2010

No. 294144

Wayne Circuit Court

LC No. 08-016616-FC

Before: MURRAY, P.J., and K. F. KELLY and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals by right her jury trial convictions of assault with intent to do great bodily harm less than murder, MCL 750.84, and felony-firearm, MCL 750.227b. The trial court sentenced defendant to consecutive terms of 23 to 120 months' imprisonment for defendant's assault conviction and two years' imprisonment for her felony-firearm conviction. We affirm.

I. BASIC FACTS

In the summer of 2008, defendant and the victim, Tahisha Gilbert, were neighbors in Detroit. Their children had a history of fighting and threatening one another. On June 15, 2008, Gilbert was cooking dinner for her father at his house when she received a phone call from one of her children. Apparently, the phone call was in regard to an altercation between her children and defendant's children and Gilbert immediately called defendant. In their conversation, according to Gilbert, defendant did not seek to peacefully resolve the situation; rather, defendant threatened that someone would have to fight and guaranteed that somebody was going to get "whooped." Gilbert returned to her neighborhood and went to defendant's house. Defendant was standing on her porch and Gilbert asked her to come down and speak with her. Defendant refused and would not speak with Gilbert; defendant indicated that she was waiting for "her people" to arrive. Gilbert returned to her home.

About twenty minutes later, a friend of Gilbert's children, Bree, began to argue with defendant and defendant's children. Approximately 25 to 30 people arrived at defendant's house and the altercation escalated into a "block fight." After some time, defendant's son came out of defendant's home and brandished a handgun. Gilbert and her children, who had been sitting on their porch, ran into their home.

Eventually, Gilbert came back out onto her front porch as the fighting between Bree and defendant's children had continued. In the meantime, Gilbert saw her friend's sister amongst the crowd and went to get her. While Gilbert was standing between her house and defendant's house, defendant pointed a gun at Gilbert. Defendant passed the gun, a rifle, to a young lady, whom Gilbert did not recognize, and said, "Shoot that b_tch." The girl shot Gilbert in the left thigh.

Defendant was arrested and charged, on an aiding and abetting theory, with assault with intent to commit murder, MCL 750.83, assault with intent to do great bodily harm less than murder, MCL 750.84, assault with a dangerous weapon, MCL 750.82, and felony-firearm, MCL 750.227b. She was convicted of assault with intent to do great bodily harm less than murder and felony-firearm. This appeal followed.

II. SUFFICIENCY OF THE EVIDENCE

Defendant first argues that the evidence was insufficient to support her convictions. We disagree. We review insufficiency of the evidence claims de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). We must review "the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006).

Defendant was convicted of assault with intent to do great bodily harm less than murder and felony-firearm on an aiding and abetting theory. The elements of assault with intent to do great bodily harm less than murder are: "(1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm *less than murder*." *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005) (citation and quotation marks omitted). This Court has defined the intent to do great bodily harm as "an intent to do serious injury of an aggravated nature." *Id.* (citation omitted). "The elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony." *People v Taylor*, 275 Mich App 177, 179; 737 NW2d 790 (2007) (citation and quotation marks omitted). Further, three additional elements are necessary to support a conviction under an aiding and abetting theory, including:

- (1) the crime charged was committed by the defendant or some other person;
- (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and
- (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that [the defendant] gave aid and encouragement. [*Robinson*, 475 Mich at 6 (quotation marks omitted).]

Here, Gilbert's testimony, if believed, was sufficient to support defendant's convictions. Gilbert indicated that defendant was pointing a rifle at her, that defendant handed the gun to a young woman standing next defendant, and said to the young woman, "Shoot that b_tch." The woman then shot Gilbert in the left thigh, causing a serious injury. Two other witnesses, Chevvone Knox and Shantiqua Powell, corroborated Gilbert's version of events in their trial testimonies. Viewing this evidence in a light most favorable to the prosecution, a rational jury could conclude that the crime of assault with an intent to do great bodily harm less than murder

was committed, that defendant's act of handing the rifle to the young woman and stating, "Shoot that b_tch," constituted encouragement that the crime be committed and also evinced an intent that the crime be committed. These same facts support defendant's felony-firearm conviction.

Further, the fact that Gilbert's testimony, as well as Knox's and Powell's, were impeached to some extent does not render the evidence in support of defendant's convictions insufficient. Questions of witness credibility are for the jury and will not be displaced by this Court. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Rather, we must draw all reasonable inferences and make credibility choices in support of the jury's verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Likewise, we reject defendant's related argument that her convictions were unsupported by sufficient evidence due to an alleged lack of police investigation and credible physical evidence. Defendant cites no authority in support of this proposition. Accordingly, we consider this argument to be abandoned. See *People v Schumacher*, 276 Mich App 165, 178; 740 NW2d 534 (2007). Nonetheless, we note that Gilbert, Knox, and Powell each provided direct evidence, through their eyewitness accounts, that implicated defendant's role in the crimes. In light of these testimonies, physical evidence was not necessary to convict defendant of the offenses charged and the lack thereof in no way undermines her convictions. Defendant's position is unavailing and relief is not warranted on this basis.

III. SENTENCING

Defendant next argues that the trial court erred by sentencing her to 23 months' imprisonment, "at the very top of the sentence guidelines," for her assault with intent to commit great bodily harm less than murder. We disagree. We review for an abuse of discretion a trial court's imposition of a sentence. *People v Aldrich*, 246 Mich App 101, 126; 631 NW2d 67 (2001). We must affirm if the defendant's minimum sentence falls within the properly scored sentencing guidelines. *People v Powe*, 469 Mich 1032; 679 NW2d 67 (2004); MCL 769.34(10).

Here, there is no allegation that the guidelines were improperly scored or that the trial court relied on inaccurate information. Rather, the trial court sentenced defendant to a minimum sentence of 23 months' imprisonment, which, as defendant concedes, was the maximum allowed under the minimum guideline range. Thus, this minimum sentence was within the guidelines range and we must affirm it. *Powe*, 469 Mich at 1032. Defendant, however, suggests that her sentence is disproportionate, given her particularized history, and that the trial court failed to tailor the sentence to her unique circumstances. "[L]egislatively mandated sentences are presumptively proportionate and valid." *People v DiVietri*, 206 Mich App 61, 63; 520 NW2d 643 (1994). Defendant has failed to overcome this presumption. Defendant's conduct caused Gilbert to be shot in her thigh. As a result, Gilbert's femur was shattered and she underwent surgery. Nonetheless, Gilbert has not been able to conduct her life as she once did; she suffers from chronic pain, she can no longer perform her job, and she and her family have had related negative psychological effects. Given these facts, and the fact that defendant has one prior conviction, we cannot conclude that the trial court abused its discretion; rather, the record

reflects that the sentence was proportionate to the seriousness of the crime. The sentence was proper.¹

Affirmed.

/s/ Christopher M. Murray

/s/ Kirsten Frank Kelly

/s/ Pat M. Donofrio

¹ Defendant also argues that her sentence is invalid under *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004) because the trial court used facts not found by the jury to assign her the maximum *minimum* sentence within the guideline range. However, our Supreme Court has determined that *Blakely*, which prohibits a sentencing court from increasing the penalty for a crime beyond its statutory *maximum* based on facts not found by a jury, is not applicable to Michigan's indeterminate sentencing scheme. See *People v Harper*, 479 Mich 599, 644-645; 739 NW2d 523 (2007). Thus, defendant is not entitled to relief on this basis.