

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHEN JEROME THOMAS,

Defendant-Appellant.

UNPUBLISHED

August 14, 1998

No. 200908

Recorder's Court

LC No. 96-006031

Before: Bandstra, P.J., and Griffin and Young, Jr., JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of second-degree murder, MCL 750.317; MSA 28.549, and armed robbery, MCL 750.529; MSA 28.797. Defendant was sentenced to twenty-five to fifty years' imprisonment for his second-degree murder conviction and twenty to fifty years' imprisonment for his armed robbery conviction, the sentences to run concurrently. We affirm.

Defendant's first argument on appeal is that the trial court erred in failing to grant his motion for a directed verdict because there was insufficient evidence that defendant committed the crimes. We disagree. On a motion for a directed verdict, the court must consider the evidence presented by the prosecution up until the time the motion was made in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the charged crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979).

In this case, there was substantial circumstantial evidence presented to prove that defendant committed the crimes. The victim in this case was found in the back of his aunt's rental car and had been shot twice, at close range, in the head and neck. Not too long after the victim was shot, a man was seen by one witness exiting the car (where the victim was later found) carrying a leather jacket, which was in the victim's possession earlier in the day. Moments later, another witness saw a man, who was later identified by the witness as being defendant, carrying a leather jacket and coming from the area where the victim was found. In addition, defendant tried to sell a cellular telephone identical to the victim's telephone soon after the murder. There was also evidence that the phone was being used by

defendant's acquaintances in the days following the crime. Circumstantial evidence and reasonable inferences therefrom may be sufficient to prove the elements of a crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). As long as inferences are drawn from established facts, nothing prohibits a factfinder from making more than one inference in reaching its decision. *People v Atley*, 392 Mich 298, 315; 220 NW2d 465 (1974); *People v McWilson*, 104 Mich App 550, 555; 305 NW2d 536 (1981). The circumstantial evidence presented in this case could lead a rational trier of fact to conclude that defendant was guilty of second-degree murder and armed robbery beyond a reasonable doubt. *Jolly, supra* at 465-466. Finally, defendant's argument that the witnesses' testimony was unreliable because of inconsistencies cannot upset the verdict as questions of credibility are left to the trier of fact to resolve. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988); see, also, *People v Queenan*, 158 Mich App 38, 55; 404 NW2d 693 (1987) (question of intent was for the factfinder to determine).

Defendant's second argument on appeal is that the trial court abused its discretion when it sentenced him. We disagree. A sentencing court abuses its discretion when it violates the principle of proportionality by imposing a sentence that is disproportionate to the seriousness of the circumstances surrounding the crime and the defendant. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990); *People v Paquette*, 214 Mich App 336, 344-345; 543 NW2d 342 (1995). Defendant was sentenced within the guidelines' range of 180 to 360 months or life for the second-degree murder conviction. Defendant's concurrent sentence for his armed robbery conviction also falls within the guidelines' range. A sentence imposed within an applicable sentencing guidelines' range is presumptively valid unless defendant can demonstrate unusual circumstances for why the sentence should be below the guidelines. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v Sharp*, 192 Mich App 501, 505-506; 481 NW2d 773 (1992). Defendant has failed to preserve the issue for appeal because defendant did not present unusual circumstances to the trial court before the sentence was imposed.¹ *Sharp, supra*.

We affirm.

/s/ Richard A. Bandstra

/s/ Richard Allen Griffin

/s/ Robert P. Young, Jr.

¹ We note that defendant has also failed to present any unusual circumstances on appeal.