

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH D. FLOWERS,

Defendant-Appellant.

UNPUBLISHED

January 22, 2002

No. 223461

Wayne Circuit Court

Criminal Division

LC No. 99-002966

Before: Cooper, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of second-degree murder, MCL 750.317, assault with intent to do great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to concurrent prison terms of twenty to forty years for the second-degree murder conviction and four to ten years for the assault conviction. Defendant also received a consecutive two-year term of imprisonment for the felony-firearm conviction. We affirm.

Defendant first argues that there was insufficient evidence to prove that he was responsible for the crime. We disagree. In reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). “[C]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

According to eyewitness Rico Blackwell’s testimony, defendant was angry at some of his neighbors on the night of the shooting. Blackwell testified that defendant grabbed a gun, that fit the description of the gun used in the shooting, and said he was going downstairs to kill them. Blackwell followed defendant downstairs. When defendant could not get into the neighbor’s home, he walked down the street towards the victims’ store. Blackwell stated that he followed defendant and saw that defendant still had the gun with him. Blackwell saw defendant with the gun in the vicinity from where the shots originated and also observed bullets strike the victims’ car. Blackwell stated that he saw defendant leave the scene after the shooting stopped and that he followed defendant home. Blackwell testified that defendant later admitted to shooting at the tires on the victims’ car.

Evidence was also presented that there had been run-ins between defendant and the victims in the past and that defendant had threatened the victims about using a gun. Moreover, a spent shell casing was found outside of defendant's home that matched the casings found at the scene of the shooting. Viewed in a light most favorable to the prosecution, we find that the foregoing evidence was sufficient to establish defendant's identity as the shooter beyond a reasonable doubt.¹

Defendant next claims that resentencing is required because the trial court considered inaccurate and irrelevant information at sentencing. We disagree.

During sentencing, defendant objected to certain information presented by the prosecutor and the victims' family. Specifically, defendant argued that this information was irrelevant and prejudicial because it was unrelated to the circumstances of the charged offenses. The trial court agreed with defendant and stated that it would not consider this information. We find no indication in the trial court's statements at sentencing that the objectionable information impacted defendant's sentences. Further, defendant was sentenced within the recommended range of the sentencing guidelines. In light of this record, we conclude that resentencing is unwarranted. See *People v Thenghkam*, 240 Mich App 29, 69-71; 610 NW2d 571 (2000); *People v Martinez (After Remand)*, 210 Mich App 199, 202-203; 532 NW2d 863 (1995); *People v Albert*, 207 Mich App 73, 75; 523 NW2d 825 (1994).

Defendant, in pro per, asserts that the trial court failed to secure a valid waiver of his right to a jury trial. We disagree. A trial court's compliance with MCR 6.402 is a question of law that is reviewed de novo by this Court. See *People v Phillips*, 246 Mich App 201, 202; 632 NW2d 154 (2001). The trial court's decision that defendant validly waived his right to a jury trial is reviewed for clear error. *People v Leonard*, 224 Mich App 569, 595; 569 NW2d 663 (1997).

MCR 6.401 provides that a defendant has the right to a jury trial and that this right may be waived, in favor of a bench trial, with the consent of the prosecutor and the approval of the trial court. MCR 6.402(B) sets forth the procedures that a trial court must follow before accepting a defendant's waiver of the right to a jury trial:

(B) Waiver and Record Requirements. Before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury. The court must also ascertain, by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court. A verbatim record must be made of the waiver proceeding.

"A valid waiver of the constitutional right to a trial by jury must be voluntary." *People v Godbold*, 230 Mich App 508, 512; 585 NW2d 13 (1998).

¹ Although defendant questions the reliability of Blackwell's testimony, because Blackwell was arguably a suspect in the shooting, the credibility of his testimony was for the trier of fact to resolve. *People v Parker*, 230 Mich App 337, 341; 584 NW2d 336 (1998).

Contrary to defendant's argument, MCR 6.402(B) does not require the trial court to expressly ask defendant if his waiver is voluntary. Rather, MCR 6.402(B) only requires that the court ascertain the voluntary nature of a defendant's waiver to a jury trial through a line of questioning. In this case, the trial court asked defendant whether any threats or promises had been made in connection with his waiver decision. Defendant answered "no" to this question and further acknowledged that he understood his right to have a jury trial but that he wanted a bench trial. We find that this line of questioning was sufficient to establish a voluntary waiver of defendant's right to a jury trial. See *People v Shields*, 200 Mich App 554, 560-561; 504 NW2d 711 (1993).

Defendant further argues, in pro per, that he received ineffective assistance of counsel. We disagree. Because defendant did not request a Ginther² hearing, this Court's review is limited to errors apparent on the record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). An unpreserved constitutional error only warrants reversal when it was a plain error affecting a defendant's substantial rights. *People v Carines*, 460 Mich 750, 764, 774; 597 NW2d 130 (1999).

To establish ineffective assistance of counsel, defendant must prove: (1) that his counsel's performance was so deficient that he was denied his Sixth Amendment right to counsel and he must overcome the strong presumption that counsel's performance was not sound trial strategy; and (2) that this deficient performance prejudiced him to the extent there is a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001).

Defendant specifically argues that defense counsel was ineffective because he stipulated to the admission of the three spent shell casings found outside defendant's residence and the fact that one of those casings matched the casings found at the crime scene. However, the spent casings found near his residence were relevant and defendant has not shown that they would have been properly excluded absent his counsel's stipulation. See MRE 401; *People v Aldrich*, 246 Mich App 101, 114; 631 NW2d 67 (2001).

Defendant also claims that his counsel gave him improper advice about waiving a jury trial. However, the record does not state what advice, if any, counsel gave defendant concerning defendant's decision to waive a jury trial. Thus, the record does not support defendant's claim that he was denied the effective assistance of counsel.

² *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

Because we do not find any error, defendant's request for a new trial due to the cumulative effect of multiple errors must fail. *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998).

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Henry William Saad