

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTIONE JAMAR SIMPSON,

Defendant-Appellant.

UNPUBLISHED
February 12, 2009

No. 279353
Oakland Circuit Court
LC No. 2007-213931-FC

Before: Gleicher, P.J., and K. F. Kelly and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of assault with intent to rob while armed, MCL 750.89, first-degree home invasion, MCL 750.110a(2), assaulting, resisting, or obstructing a police officer, MCL 750.81d(1), and five counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to concurrent terms of 15 to 40 years' imprisonment for the assault conviction, 10 to 20 years' imprisonment for the home invasion conviction, one to two years' imprisonment for the resisting a police officer conviction, and a consecutive term of two years' imprisonment for the felony-firearm convictions. We affirm.

I. Factual History

On March 6, 2007, Demetria Hodges waited in her apartment for her boyfriend, Jamaal Walker, to arrive. Hodges heard noises outside the apartment door, but did not see anyone through the peephole. When Hodges looked out a window she observed Walker's car in the parking lot. Hodges tried unsuccessfully to contact Walker on his cell phone. When Hodges again went to look through the peephole she saw Walker. After she unlocked the door, Walker entered the apartment with defendant, who held a gun to the side of Walker's head.

Defendant queried Walker, "Where is the money?" Defendant then pointed the gun at Hodges, told her that she was not involved, and demanded that she go into the bathroom and close the door. From the bathroom, Hodges listened as defendant searched through the apartment. When she heard the apartment door close, Hodges left the bathroom and from the apartment window, saw defendant and Walker in the parking lot. Hodges phoned the police, who located defendant and arrested him in a building within the apartment complex. Defendant did not cooperate with the police, but when ultimately secured the police retrieved from on or

near defendant a gun, cash, two cellular phones and a bag of marijuana. A search of Walker's vehicle revealed another firearm and drug paraphernalia.

II. Standard of Review

This Court reviews de novo claims challenging the sufficiency of the evidence. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). When reviewing a sufficiency of the evidence claim, this Court examines the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime charged were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

III. Analysis

Defendant initially asserts that insufficient evidence supported his first-degree home invasion conviction. The elements of first-degree home invasion are: (1) the defendant broke into and entered a dwelling without permission, (2) while intending to commit or actually committing a felony, larceny, or assault during the time that he is entering, exiting, or present within the dwelling, and (3) another person was lawfully present in the dwelling or the defendant was armed with a dangerous weapon. *People v Sands*, 261 Mich App 158, 162; 680 NW2d 500 (2004).

Defendant argues that the circumstantial evidence offered by the prosecution in this case is insufficient to satisfy the elements of a first-degree home invasion charge, in part because the evidence offered by the prosecution was not credible. However, circumstantial evidence and the reasonable inferences drawn from that evidence are sufficient to prove the elements of a crime. *People v Schumacher*, 276 Mich App 165, 167; 740 NW2d 534 (2007). "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

Hodges's testimony that she intended to admit Walker but not defendant into the apartment satisfied the breaking and entering component of home invasion. Defendant's actions in searching through the apartment and demanding money while brandishing a gun allowed the trier of fact to reasonably infer that defendant had the intent to commit a felony, larceny or assault while in the residence, and thus established the second element of home invasion. The evidence of Hodges's lawful presence in the apartment and defendant's possession of a weapon amply established the final element of first-degree home invasion. Accordingly, sufficient evidence supported defendant's conviction of this crime.

Defendant also argues that insufficient evidence existed to convict him of assault with intent to rob Hodges. However, because the jury acquitted defendant of that charge and this Court cannot fashion a remedy in response to this issue, we decline to examine it further. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

Defendant lastly maintains that the sentences imposed by the trial court qualify as disproportionate and cruel and unusual punishment. Defendant acknowledges that his sentences all fall within the applicable guidelines range.¹ When a sentence imposed by the trial court comes within the guidelines range, it is presumed proportionate and must be affirmed on appeal unless the trial court improperly scored the guidelines or relied on inaccurate information. *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008).

Defendant does not assert that the trial court improperly scored the guidelines or relied on inaccurate information, but rather complains that he is a 29-year-old man who will spend a minimum of 17 years in prison due to convictions resting on questionable evidence. This argument fails to overcome the presumption of proportionality because it goes beyond the limited scope afforded to this Court for review of a sentence within the guidelines range. Defendant's claim that his sentences constitute cruel and unusual punishment also fails because a sentence that qualifies as proportionate cannot constitute cruel and unusual punishment. *Powell*, *supra* at 323.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Kirsten Frank Kelly
/s/ Christopher M. Murray

¹ The trial court sentenced defendant to a minimum term of 120 months for the home invasion conviction, which falls within the sentencing guidelines range of 84 to 140 months. The trial court also sentenced defendant to a minimum term of 180 months for the assault with intent to rob while armed conviction, which is within the sentencing guidelines range of 135 to 225 months.