

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH LOMAX,

Defendant-Appellant.

UNPUBLISHED

October 13, 2009

No. 285954

Wayne Circuit Court

LC No. 08-001066-FC

Before: K. F. Kelly, P.J., and Jansen and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of armed robbery, MCL 750.529, felonious assault, MCL 750.82, assault with intent to commit armed robbery, MCL 750.89, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. We affirm.

I. Basic Facts

In November 2007, then high school students Thaddius Watkins, Adam Maddox, Makya Baker, and Terrena Allen were waiting outside their high school for rides home. A masked gunman, allegedly defendant, approached Watkins and, pointing the gun at Watkins' head, stated, "You give me everything in your pockets." Two other men then approached. Baker made a statement to defendant to which defendant replied, "[T]his ain't no game," and pushed her away from where she was standing next to Watkins. The two other men went through Watkins' pockets and took his wallet.¹ Defendant then pointed the gun at Maddox and asked him if he had anything. Maddox answered in the negative and the three men ran from the school. Baker, who knew defendant because she had previously gone to school with him, told Watkins and Maddox defendant's name. Subsequently, Watkins and Maddox's ride arrived and they went home. Baker and Allen, however, went into the school and reported the incident to officer Farrar, the school's security officer. Baker identified defendant in a school photo book and

¹ One of these men was identified as Lamar Walker. Defendant and Walker were tried together on four counts: (1) armed robbery, (2) felonious assault, (3) assault with intent to commit armed robbery, and (4) felony-firearm. Walker was convicted of armed robbery and assault with intent to commit armed robbery and he has not appealed his convictions.

provided a written statement. The next day, Watkins and Maddox went to the school's security office and also provided written statements. Both Watkins and Maddox looked through separate school photo books and both also identified defendant.

Defendant was arrested and convicted as charged. He was sentenced to concurrent terms of 10 ½ to 16 years for armed robbery, one to four years for felonious assault, 10 ½ to 16 years for assault with intent to commit armed robbery, and to a consecutive term of two years for felony-firearm. This appeal followed.

II. Sufficiency of the Evidence

Defendant first argues that the evidence was insufficient to support his convictions. We disagree. We review “de novo a claim that the evidence at trial was insufficient to support a conviction.” *People v Solmonson*, 261 Mich App 657, 661; 683 NW2d 761 (2004). In doing so, we must “view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found all the elements of the offense proved beyond a reasonable doubt.” *Id.*

Due process requires the prosecution to prove the elements of the crime beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-514; 489 NW2d 748 (1992). Here, defendant was charged with armed robbery, felonious assault, assault with attempt to commit armed robbery, and felony-firearm. Accordingly, the prosecution was required to prove beyond a reasonable doubt the elements of all of these crimes. “The elements of armed robbery are: (1) an assault, (2) a felonious taking of property from the victim’s presence or person, and (3) while the defendant is armed with a weapon.” *People v Smith*, 478 Mich 292, 319; 733 NW2d 351 (2007). “The offense of assault requires proof that the defendant made either an attempt to commit a battery or an unlawful act that places another in reasonable apprehension of receiving an immediate battery.” *People v Watkins*, 247 Mich App 14, 33; 634 NW2d 370 (2001). “The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery.” *People v Chambers*, 277 Mich App 1, 8; 742 NW2d 610 (2007) (citation and quotation marks omitted). In addition, the crime of assault with intent to commit armed robbery is defined as follows:

Any person, being armed with a dangerous weapon, or any article used or fashioned in a manner to lead a person so assaulted reasonably to believe it to be a dangerous weapon, who shall assault another with intent to rob and steal shall be guilty of a felony [*People v Walls*, 265 Mich App 642, 645; 697 NW2d 535 (2005) (citation and emphasis omitted).]

Finally, “[t]he elements of felony-firearm are that the defendant possessed a firearm during the commission of, or the attempt to commit, a felony.” *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

After our review of the evidence, in a light most favorable to the prosecution, we conclude that the evidence is sufficient to support defendant’s convictions. The complainants, Watkins, Maddox, and Baker, each testified that defendant, accompanied by two other men, aimed a gun at Watkins and demanded his belongings. While defendant aimed the gun at

Watkins, two other men reached into Watkins' back pocket and took his wallet. These facts sufficiently establish the elements of armed robbery. Record evidence further supports defendant's conviction for felonious assault and assault with intent to commit armed robbery. At one point during the incident, defendant pointed the gun at Baker, verbally threatened her, and pushed her out of the way. After taking Watkins' wallet, defendant also pointed the gun at Maddox and asked him whether he had anything valuable. Maddox responded that he did not and defendant left the scene. Because defendant brandished a gun at Watkins, Baker, and Maddox while committing the armed robbery, the felonious assault, and the assault with intent to commit armed robbery, the elements of felony-firearm are also established.

Finally, there is no merit to defendant's argument that the evidence was insufficient because the testimony of Watkins, Baker, and Maddox identifying defendant contradicted their testimonies given during the preliminary examination. "The credibility of identification testimony is a question for the trier of fact that [this Court does] not resolve anew." *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000); *People v Lemmon*, 456 Mich 625, 646; 576 NW2d 129 (1998). Further, because we must make all reasonable inferences in the prosecution's favor, we resolve all credibility conflicts in favor of the jury verdict. *Solmonson*, *supra* at 661. Accordingly, we conclude that the evidence is sufficient to support defendant's convictions.

III. Sentencing

Defendant next argues that his sentences are disproportionate, and thus, cruel and unusual punishment under the federal and Michigan Constitutions. We do not agree. A review of the record clearly shows that the trial court sentenced defendant within the minimum guidelines range. Therefore, defendant's sentences are presumptively proportionate and, unless defendant can overcome this presumption, they do not amount to cruel and unusual punishment. See *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008).

On appeal, defendant suggests that the trial court should have deviated below the minimum guidelines range given defendant's age and "clean prior adult criminal record." However, defendant has not explained how his age of then 17 years at sentencing makes his sentence disproportionate. Nor has he explained how his "clean prior adult criminal record," in light of his previous juvenile adjudication for armed robbery and the fact that he had become an "adult" only very recently, renders his sentences unconstitutional. Thus, defendant has not overcome the presumption that his sentences are proportionate to his convictions. Accordingly, we conclude that there is no violation of the guarantee against cruel and unusual punishment.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald