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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARQUIS TERRELL-LAMAR EVANS,

Defendant-Appellant.

UNPUBLISHED
November 18, 2021

No. 353746
Monroe Circuit Court
LC No. 19-245051-FC

Before: GLEICHER, P.J., and K. F. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of second-degree murder, MCL 750.317, assault with intent to do great bodily harm less than murder (AWIGBH), MCL 750.84, felon in possession of a firearm (felon-in-possession), MCL 750.224f, and three counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced, as a fourth-offense habitual offender, MCL 769.12, to 60 to 90 years' imprisonment for the second-degree murder conviction, 12 to 40 years' imprisonment for the AWIGBH conviction, 5 to 15 years' imprisonment for the felon-in-possession conviction, and 24 months' imprisonment for each of the felony-firearm convictions. Finding no errors warranting reversal, we affirm defendant's convictions and sentences.

I. BASIC FACTS AND PROCEDURAL HISTORY

Defendant's convictions arise from the shooting of victims, Meagin Robison and Gregory James, following a disagreement over a drug transaction. Robison was shot in the forearm and survived. James was shot in the neck and died from the wound.

For a three month period, Robison purchased crack cocaine and sometimes marijuana from defendant. At times, she made five purchases of cocaine in a day. She lived within two blocks of defendant, and the transactions would occur at various locations. Robison described her relationship with defendant as amicable. Although she had seen defendant with a firearm, she did not fear him. In fact, if defendant came to her home to conduct a drug transaction, she would prepare a meal for defendant to take with him. If Robison believed that defendant "shorted" her during a drug sale, he would make up for any loss.

Specifically, on January 22, 2019, Robison and James purchased crack cocaine from defendant for $40. The purchase occurred at defendant's home, and defendant angrily lectured Robison about the manner James parked his truck because it called attention to the home. Upon returning home and believing they did not get their money's worth, Robison and James attempted to contact defendant with telephone calls and text messages. Defendant responded by text message that they should not come back to his house because it would not be in their best interest, and they would end up on "the news." Nevertheless, Robison and James left their house and walked to defendant's home. Before leaving, James inserted a baseball bat into the sleeve of his jacket. However, Robison testified that the baseball bat was not visible and James took the bat because the neighborhood was not safe. They chose not to drive to defendant's home because of his prior complaint about the manner in which they parked their vehicle.

When they arrived at defendant's house, Robison and James continued to try and contact defendant by telephone and text messages. When the victims saw defendant's back door crack open, they walked up the sidewalk toward his porch. Robison claimed the pair walked calmly toward defendant's door. She testified that they never reached the area of defendant's porch. However, defendant opened the door, threw a cooking pot at James, and began firing his weapon. Robison was shot in the left arm. James fell on his back and was bleeding from his neck. Robison tried to apply aid to James and call 911. Defendant went back into his home.

On the contrary, defendant testified that he acted in self-defense. Specifically, defendant denied that he shorted the victims of any drugs. He claimed that drug addicts immediately view their purchase and that the victims effectively wanted a bigger "high." When he was approached by the victims, Robison yelled at defendant, but defendant kept his voice low to avoid attracting attention. To end the confrontation, he threw a pot at the victims. Because this act did not dissuade them, he fired a shot from his gun at the ground, but James continued to advance. Defendant claimed that he saw James pull an object out of his coat and, fearing for his life, began shooting. After the shots were fired, defendant fled the scene and was arrested approximately eight days later. Defendant was able to evade the police because he sought the assistance of friends and customers and used their cellphones to avoid being tracked by the police.

Despite defendant's testimony and claim of self-defense, the jury convicted defendant of second-degree murder, AWIGBH, felony-firearm, and felon-in-possession. As relevant here, the trial court sentenced defendant to 60 to 90 years' imprisonment for the second-degree murder conviction and 12 to 40 years' imprisonment for the AWIGBH conviction. This appeal followed.

II. SUFFICIENCY OF THE EVIDENCE

Defendant first contends the evidence was insufficient to convict him, because plaintiff could not prove beyond a reasonable doubt he did not act in self-defense.[1] We disagree.

[1] In his issue statement to the Court, defendant suggests the evidence was insufficient to convict him of all counts. However, defendant only argues the evidence was insufficient to convict him of second-degree murder and AWIGBH. Indeed, defendant testified at trial he discharged the

This Court reviews questions of constitutional law de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). "Claims of insufficient evidence are reviewed de novo." *People v Kloosterman*, 296 Mich App 636, 639; 823 NW2d 134 (2012). "In determining whether the prosecutor has presented sufficient evidence to sustain a conviction, an appellate court is required to take evidence in the light most favorable to the prosecutor." *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010). "[T]he question on appeal is whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt." *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002). "All conflicts in the evidence must be resolved in favor of the prosecution and [this Court] will not interfere with the jury's determinations regarding the weight of the evidence and the credibility of the witnesses." *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008).

When a criminal defendant asserts a claim of self-defense, the burden shifts to the prosecutor to prove beyond a reasonable doubt defendant did not act in self-defense. *People v Stevens*, 306 Mich App 620, 630; 858 NW2d 98 (2014). The self-defense right is codified under the Self-Defense Act, MCL 780.971 *et seq*., which states, in pertinent part:

> (1) An individual who has not or is not engaged in the commission of a crime at the time he or she uses deadly force may use deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if either of the following applies:
>
> (a) The individual honestly and reasonably believes that the use of deadly force is necessary to prevent the imminent death of or imminent great bodily harm to himself or herself or to another individual. [MCL 780.972(1); see also *People v Wilder*, 307 Mich App 546, 562; 861 NW2d 645 (2014) (stating the Self-Defense Act requires "an honest and reasonable belief that death or great bodily harm is imminent.").]

To support his argument that the jury did not have sufficient evidence to convict in light of his self-defense theory, defendant selectively cites to his own testimony to assert there was no evidence to refute the assertion that James was charging toward him with a baseball bat. In other words, the only evidence defendant presented to demonstrate the necessary use of force was his own testimony. In fact, defendant completely ignores the testimony refuting the necessity of the use of force.

Robison, who witnessed first-hand the events leading up to and including the shooting, testified that while James was carrying a baseball bat, the purpose was not to confront defendant with it. Rather, James was carrying the baseball bat because the neighborhood was dangerous, and they were walking, not driving, to defendant's house. Robison also testified that defendant warned her and James not to come over, stating it would not be in their best interest because they would "make the news." With respect to the shooting itself, Robison was insistent that James never took the baseball bat out of his sleeve before defendant began shooting. Instead, she claimed

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firearm that killed and wounded the victims. He also admitted he was previously convicted of a felony and not allowed to possess a firearm.

the baseball bat came out of James's sleeve after he was shot in the neck and collapsed. This was corroborated by an eye witness, Carlton Smith, who stated he never saw anything in James's hand, but a cellular telephone. Robison also stated she never had anything in her hands but a drinking cup, a fact that was confirmed by defendant's testimony.

The jury, presented with conflicting testimony on whether James made any threatening advance toward defendant, was entitled to believe the prosecutor's witnesses and not defendant. See *People v Walker*, 330 Mich App 378, 385; 948 NW2d 122 (2019) ("[T]he jury was not obligated to accept defendant's testimony, but rather was only precluded from speculating."). In addition to Robison's testimony, the jury heard testimony from Dr. Carl Schmidt, the medical examiner, who stated that the graze wounds on James's body were consistent with James bending over while collapsing. To be fair, he also stated the wounds were consistent with crouching and charging defendant. Dr. Schmidt further testified there was no evidence that the gun was fired at James from a close distance, discounting the theory that James was charging at defendant. Thus, defendant's contention that the jury ignored the evidence of self-defense is not consistent with the record. Indeed, defendant's text messages cautioned the victims about the consequences of their complaint about the quantity of the crack cocaine received. Additionally, the jury asked the trial court questions about the scope of the right to self-defense during its deliberations. The jury considered the parties' evidence and concluded defendant was not justified in using deadly force against Robison and James. There was sufficient evidence for the jury to conclude that defendant did not act in self-defense and that the prosecution met its burden beyond a reasonable doubt.

III. SENTENCE

Next, defendant contends the trial court's sentences were unreasonable and an abuse of discretion because the trial court initially was willing to sentence defendant to 20 years' imprisonment as part of a *Cobbs* plea.[2] We disagree.

This Court reviews sentences imposed that are outside of the guidelines range for reasonableness. *People v Barnes*, 332 Mich App 494, 504; 957 NW2d 62 (2020). Sentences imposed within the guidelines range are presumptively proportionate and, therefore, reasonable, and a proportionate sentence is not cruel or unusual. *People v McFarlane*, 325 Mich App 507, 538; 926 NW2d 339 (2018). "[T]he proper inquiry when reviewing a sentence for reasonableness is whether the trial court abused its discretion by violating the principle of proportionality . . . ." *People v Carlson*, 332 Mich App 663, 667; 958 NW2d 278 (2020) (quotation marks and citation omitted; alteration in original).

First, we note defendant did not preserve this issue for appeal because he did not object to the sentence in the trial court, file a motion for resentencing, or file a motion to remand with this Court. See *People v Anderson*, 322 Mich App 622, 634; 912 NW2d 607 (2018). Thus, we review defendant's argument for plain error. See *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). To avoid forfeiture, "three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id.*

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[2] *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

Whether the error affected substantial rights "generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *Id.*

Defendant contends that while the sentences he received were within the guidelines range, the trial court's sentences were unreasonable because they exceeded the offer of 20 years from the trial court under a *Cobbs* plea. However, in *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993), our Supreme Court rejected the idea that a sentencing court is later bound by a plea offer, stating: "The judge's preliminary evaluation of the case does not bind the judge's sentencing discretion, since additional facts may emerge during later proceedings, in the presentence report, through the allocution afforded to the prosecutor and the victim, or from other sources."

Such was the case here. At the time the *Cobbs* plea was offered, the trial court stated it was familiar with the facts; however, it had not yet listened to three days of testimony comprising almost two dozen witnesses, including defendant. Indeed, the trial court cited at sentencing defendant's own testimony during trial. Specifically, the trial court noted defendant's callous attitude toward the victims when he likened them to animals needing to be shooed away. The trial court also heard testimony regarding possible premeditation by defendant when he warned the victims not to come to his house.

In addition to the trial testimony, the trial court heard James's father provide a victim-impact statement regarding the trauma the family suffered as a result of James's death. The trial court also considered defendant's nine previous felony convictions and that defendant was dealing drugs in the community when sentencing defendant. In other words, the trial court was presented with additional facts from the trial and the sentencing hearing that provide justification for the trial court's decision to increase the maximum sentence between the *Cobbs* discussion and sentencing. See *Cobbs*, 443 Mich at 283.

Defendant's reliance on *Solem v Helm*, 463 US 277; 103 S Ct 3001; 77 L Ed 2d 637 (1983), and *People v Bullock*, 440 Mich 15; 485 NW2d 866 (1992), to argue his sentences were disproportionate is misplaced. In *Solem*, the defendant was charged with passing bad checks and for being a habitual offender, and was sentenced to life in prison. *Solem*, 463 US at 296-297. In *Bullock*, the defendants were convicted of possession of more than 650 grams of cocaine, and also sentenced to life in prison. *Bullock*, 440 Mich at 22. In both cases, the reviewing court concluded the sentences were disproportionate to the severity of the crimes. See *Solem*, 463 US at 303; *Bullock*, 440 Mich at 37.

A penalty is determined to be cruel or unusual by considering the following three factors: "(1) the severity of the sentence imposed and the gravity of the offense, (2) a comparison of the penalty to penalties for other crimes under Michigan law, and (3) a comparison between Michigan's penalty and penalties imposed for the same offense in other states." *People v Benton*, 294 Mich App 191, 204; 817 NW2d 599 (2011). Defendant suggests only that the severity of the penalty was not proportional to the gravity of the offense as a result of the evidence of self-defense.

In this case, defendant was convicted of second-degree murder and assault with intent to do great bodily harm, both extremely violent offenses, in contrast with drug possession and passing bad checks. In other words, the severity of defendant's crimes were not disproportionate to the sentences he received. See MCL 750.317 (providing for life in prison for second-degree murder).

Moreover, because defendant's sentences were within the guidelines range, defendant had to "show that there was something unusual about the circumstances of his case that made the sentence disproportionate." *McFarlane*, 325 Mich App at 538. Defendant has failed to show anything unusual about the circumstances of the case; rather, the jury simply did not believe he was justified in using lethal force. Thus, his sentences are proportionate and reasonable. See *id*.

Similarly, the trial court did not violate defendant's right against cruel and unusual punishment, US Const, Am VIII. This Court has held that a proportionate sentence is not cruel and unusual. *McFarlane*, 325 Mich App at 538. The trial court's sentence was within the guidelines range and was, therefore, presumptively proportionate and reasonable. See *id*. Moreover, and as discussed above, defendant's sentences for second-degree murder and AWIGBH were proportionate to the crimes. See *id*. The trial court was entitled to take the individual circumstances of the case into account when fashioning defendant's sentence. See *People v Sabin (On Second Remand)*, 242 Mich App 656, 661; 620 NW2d 19 (2000). The trial court concluded defendant's crimes showed a complete indifference to human life. The trial court also concluded defendant's drug dealing was a danger to the community at large. Thus, his sentence was not cruel and unusual.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Kirsten Frank Kelly