

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
May 21, 2013

v

TYJUAN DANTHONY HUDSON,

Defendant-Appellant.

No. 308576
Wayne Circuit Court
LC No. 11-009364-FC

Before: CAVANAGH, P.J., and SAAD and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. We affirm.

On July 21, 2011, the victim's vehicle broke down. While he was on the side of the road, with one foot in the vehicle and one foot on the ground, another vehicle pulled up and parked so close to the victim's vehicle that he was "blocked in" his vehicle. Defendant exited that vehicle from the passenger side, carrying a gun, and had a t-shirt pulled up over half of his face. He approached the victim, put a gun to his head, and told the victim to "give me everything you got or I'm gonna blow your motherfuckin brains out." As the victim was "looking in his face," the t-shirt slid down under defendant's chin and the victim saw defendant's entire face. The victim stared directly at defendant's face and was focused on his face during the robbery. Defendant then proceeded to rob the victim of his watch, wallet, radio, phone, and other items. A fire truck passing by apparently noticed the robbery in progress and turned on its siren. Defendant returned to his vehicle and the vehicle left the scene.

Within minutes, the victim called the police and gave a description of defendant which included that he was a black male in his early twenties, with brown eyes and black hair. The victim also described the vehicle, gave a partial license plate number, and described the clothes that defendant was wearing. He also indicated that defendant was about 5'2" or 5'4" tall and weighed about 130 pounds. Within days, the victim was called to attend a live lineup and he advised the officer that the perpetrator may have been about 5'6" or 5'7" tall. The victim was 6'3" tall and knew that the perpetrator was shorter than him. According to the Detroit police officer who was present during the live lineup, the victim immediately identified defendant as

the person who robbed him at gunpoint. At trial, the victim also repeatedly identified defendant as the person who held a gun to his head and robbed him.

On appeal defendant challenges both convictions on the ground that there was insufficient evidence to establish that he was the person who committed the crimes. We disagree.

“This Court reviews de novo claims of insufficient evidence, viewing the evidence in the light most favorable to the prosecution, to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Bennett*, 290 Mich App 465, 471-472; 802 NW2d 627 (2010). In addition, “this Court must defer to the fact-finder’s role in determining the weight of the evidence and the credibility of the witnesses.” *Id.* at 472.

Establishing the identity of the defendant as the perpetrator is an essential element of any criminal prosecution. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976); *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008). Identity may be established by either direct testimony or circumstantial evidence. *People v Kern*, 6 Mich App 406, 409-410; 149 NW2d 216 (1967). “The credibility of identification testimony is a question for the trier of fact that we do not resolve anew.” *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Generally, a positive identification by a witness may be sufficient evidence to support a conviction. *Id.*

In this case, the victim testified that he clearly saw the perpetrator’s face while a gun was being held to his head and he was being robbed. The victim gave an extensive description of the perpetrator, as well as the involved vehicle. While defendant argues on appeal that the physical description the victim gave of the perpetrator was inconsistent with defendant’s actual height and weight, the facts remain that the victim had ample time to stare into the uncovered face of the perpetrator who was standing within a couple of feet from him. In light of the circumstances, including that the victim was focused on the perpetrator’s face and not necessarily on his height and weight, the jury clearly concluded that any discrepancy in the victim’s physical description of defendant did not outweigh the facts that the victim immediately selected defendant from a live lineup and repeatedly testified that defendant was the person who held a gun to his head and robbed him. The jury is responsible for both credibility and evidentiary weight determinations. *Bennett*, 290 Mich App at 472. We will not invade the province of the jury by considering and resolving the credibility of the victim’s identification testimony on appeal. See *Davis*, 241 Mich App at 700. Accordingly, this issue is without merit.

Next, defendant argues that his sentence of 10 to 20 years’ imprisonment for armed robbery constitutes cruel or unusual punishment. US Const Am VIII; Const 1963, art 1, § 16. We disagree.

The sentencing guidelines minimum range was 81 to 135 months and defendant was sentenced within the guidelines. “If the trial court’s sentence is within the appropriate guidelines range, the Court of Appeals must affirm the sentence unless the trial court erred in scoring the guidelines or relied on inaccurate information in determining the defendant’s sentence.” *People v Babcock*, 469 Mich 247, 261; 666 NW2d 231 (2003). Although this limitation on review is not

applicable to claims of constitutional error, “a sentence within the guidelines range is presumptively proportionate and a sentence that is proportionate is not cruel or unusual punishment.” *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008) (citations omitted). In support of his claim, defendant argues that his sentence is cruel or unusual because he is in his early twenties and the identification evidence was not strong. However, defendant’s claim related to the identification evidence is without merit as discussed above. And despite his youth, defendant has had a fairly extensive criminal history including, most recently, two dispositions under the Holmes Youthful Trainee Act and was on probation when he committed these offenses. Because defendant has failed to overcome the presumption of proportionality, his constitutional challenge is without merit.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Michael J. Riordan