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# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>November 20, 2026<br>10:11 AM |
| v | No. 372005<br>Genesee Circuit Court |
| KEVIN STUBBS, JR.,<br><br>Defendant-Appellant. | LC No. 2023-051142-FC |

Before: ACKERMAN, P.J., and BORRELLO and KOROBKIN, JJ.

PER CURIAM.

Defendant, Kevin Stubbs, Jr., appeals as of right his June 12, 2024 jury-trial convictions and July 22, 2024 sentence for second-degree murder, MCL 750.317, assault with a dangerous weapon (AWDW), MCL 750.82(1), being a felon in possession of a firearm (felon-in-possession), MCL 750.224f(1), witness intimidation, MCL 750.122(7)(b), and four counts of carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227b(1). The trial court sentenced defendant as a fourth-offense habitual offender, MCL 769.12, to serve 60 years to 100 years' incarceration for the second-degree murder conviction, 58 months to 15 years' incarceration for the AWDW conviction, 76 months to 20 years for the felon-in-possession conviction, 152 months to 20 years for the witness-intimidation conviction, and a consecutive sentence of 10 years for the felony-firearm convictions. On appeal, defendant argues that the evidence was insufficient to support his conviction, that the trial court abused its discretion by denying his motion to substitute counsel, and that his sentence was disproportionate. For the reasons set forth in this opinion, we affirm.

## I. BACKGROUND

This appeal concerns the conviction of defendant arising from a series of events culminating in the homicide of the victim, with whom defendant had a contentious relationship. On a date shortly preceding the homicide, defendant and the victim engaged in a verbal altercation at the victim's residence, during which defendant discharged a firearm inside the home. No one was injured in this incident. The victim contacted law enforcement, who responded to the scene but did not make any arrests.

Several nights later, defendant entered the residence of the victim's neighbor and assaulted the victim's friend by grabbing her neck, forcing her head against a countertop, and placing a firearm against her head. Defendant subsequently exited the neighbor's home and was observed by the victim's friend approaching the victim's residence. Shortly after defendant entered the victim's home, multiple gunshots were heard. The victim's child, upon hearing the gunfire, discovered the victim unresponsive on the floor. Law enforcement was contacted, and the victim's friend initiated CPR. Responding officers pronounced the victim deceased at the scene as a result of gunshot wounds.

Subsequent to these events, defendant and an acquaintance were apprehended, and the police seized both individuals' cellphones. A search of the acquaintance's residence yielded a backpack and cellphones belonging to defendant. On the acquaintance's phone, law enforcement discovered a photograph depicting defendant and the acquaintance in possession of a black and silver handgun, taken in the acquaintance's bedroom on the night of the homicide.

Following his arrest, defendant made several telephone calls to the acquaintance, wherein he referenced a "joystick" and "hair dryers"—phrases which law enforcement officers interpreted as coded language for firearms. Defendant also coordinated, via calls and text messages, for his brother to retrieve a "joystick" (alternatively referred to as a "strap") from the acquaintance. Police subsequently executed searches at multiple residences linked to defendant's brother and the acquaintance, recovering several firearms. While none of the recovered firearms matched the ballistics of the casings found at the homicide scene, a 9 mm cartridge casing found in the home of the victim from the incident where defendant fired a weapon in the house was matched to the same weapon from a fired cartridge casing found near the body of the victim.

Defendant proceeded to a jury trial spanning eight days. During the initial three days, defendant declined to participate in the proceedings, asserting dissatisfaction with appointed counsel. Defendant alleged that counsel demonstrated bias (arguing that counsel was working for the State); failed to pursue potential character witnesses identified by defendant; and withheld materials necessary for defendant to seek an interlocutory appeal in this Court. The trial court denied defendant's motion for substitution of counsel, reasoning that a defendant's non-cooperation does not, alone, entitle him to new counsel. The trial continued with multiple witnesses testifying regarding the pertinent events. The prosecution also introduced physical evidence, including shell casings from the shooting incidents, the autopsy report, and cell-site data reflecting defendant's location on the night of the homicide.

As indicated above, the jury convicted defendant of second-degree murder, as a lesser included offense of first-degree murder, as well as assault with a dangerous weapon (MCL 750.82(1)), felon in possession of a firearm (MCL 750.224f(1)), witness intimidation (MCL 750.122(7)(b)), and four counts of felony-firearm (MCL 750.227b(1)). Defendant was sentenced as a fourth-offense habitual offender. For the felony-firearm convictions, the trial court imposed a consecutive sentence of 10 years' imprisonment. Pertinent to this appeal, the sentencing guidelines for second-degree murder established a minimum range of 365 to 1,200 months' incarceration, or life. The trial court imposed a sentence of 60 to 100 years' imprisonment for the second-degree murder conviction.

Defendant now appeals, contending: (1) that the evidence was insufficient to sustain his conviction for second-degree murder; (2) that his right to counsel was violated; and (3) that the trial court imposed a disproportionate sentence for second-degree murder.

## II. ANALYSIS

### A. SUFFICIENCY OF THE EVIDENCE

Defendant contends that the evidence presented at trial was insufficient to sustain his convictions for second-degree murder and felony-firearm. The standard of review for sufficiency of the evidence is de novo. *People v Miller*, 326 Mich App 719, 735; 929 NW2d 821 (2019). A de novo review requires this Court to independently determine whether the evidence was sufficient, without affording deference to the trial court's findings. *People v Beck*, 504 Mich 605, 618; 939 NW2d 213 (2019). Due process mandates that the prosecution present evidence sufficient to permit a rational trier of fact to find the defendant guilty beyond a reasonable doubt. *People v Jarrell*, 344 Mich App 464, 480; 1 NW3d 464 (2022), citing *Jackson v Virginia*, 443 US 307, 317; 99 S Ct 2781; 61 L Ed 2d 560 (1979). In reviewing a sufficiency challenge, the reviewing Court must evaluate whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jarrell*, 344 Mich App at 480. The reviewing Court must draw all reasonable inferences and resolve issues of witness credibility in support of the jury's verdict. *People v Oros*, 502 Mich 229, 239; 917 NW2d 559 (2018). Circumstantial evidence and the reasonable inferences drawn therefrom are sufficient to establish each element of an offense. *Id*. "Circumstantial ... evidence is evidence of a fact, or a chain of facts or circumstances, that, by indirection or inference, carries conviction to the mind and logically or reasonably establishes the fact to be proved." Circumstantial evidence may sustain criminal convictions, but "the circumstantial proof must facilitate reasonable inferences of causation, not mere speculation." *People v Wang*, 505 Mich 239, 251; 952 NW2d 334 (2020) (internal citations omitted).

Defendant's conviction for second-degree murder arises under MCL 750.317. To establish second-degree murder, the prosecution must prove beyond a reasonable doubt: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse. *People v Lange*, 251 Mich App 247, 251; 650 NW2d 691 (2002). Malice may be demonstrated by evidence of an intent to kill, intent to cause great bodily harm, or by conduct evincing a wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm. *People v Gafken*, 510 Mich 503, 511; 990 NW2d 826 (2022). The identity of the defendant as the perpetrator is also an essential element. *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008).

Although the prosecution's case for second-degree murder relied primarily on circumstantial evidence, the record supports the jury's verdict. Law enforcement recovered a shell casing fired by defendant during an earlier incident at the victim's residence; ballistic analysis confirmed this casing was fired from the same firearm as the casings recovered at the scene on the night of the homicide. Additional trial testimony placed defendant at the victim's home at the relevant time, including testimony from the victim's friend who confirmed defendant's presence in the residence.

Defendant challenges the credibility of the friend's testimony, arguing that her alleged animosity toward defendant—stemming from her testimony that defendant assaulted and threatened her at gunpoint—renders her account unreliable. Nonetheless, this Court is obligated to draw all credibility inferences in favor of the jury's verdict. *Oros*, 502 Mich at 239. No evidence in the record directly contradicts the friend's testimony. Moreover, defendant's own statement to law enforcement placed him within walking distance of the victim's residence at the time of the homicide.

Defendant further asserts that the absence of a recovered firearm matching the casings found at the scene undermines the sufficiency of the evidence. However, the prosecution introduced evidence that defendant had access to a firearm consistent with the casings recovered after the homicide. Testimony established that, during a prior domestic dispute, the victim's child observed defendant discharge a handgun inside the victim's home; police retrieved a casing at that time that matched those discovered after the homicide. This evidence supports the inference that defendant had access to the weapon used in the offense. The record also contains substantial evidence that defendant attempted to conceal or relocate a firearm, as demonstrated by his coded communications referencing a "joystick" and a "hair dryer," and subsequent arrangements involving his brother and an acquaintance to retrieve the "joystick"—terms understood as references to a firearm. Although the police did not recover the weapon used in the homicide, these efforts to conceal evidence support an inference of consciousness of guilt. *People v Kowalski*, 489 Mich 488, 509; 803 NW2d 200 (2011). Furthermore, photographic evidence established that defendant was in possession of a firearm matching the relevant casings on the night of the homicide.

Defendant also contends that the prosecution's theory was implausible due to the absence of a demonstrated motive. Such an argument is without merit as the prosecution is not required to prove motive to establish second-degree murder. *People v Unger*, 278 Mich App 210, 223; 749 NW2d 272 (2008) ("Although motive is not an essential element of the crime, evidence of motive in a prosecution for murder is always relevant.") citing *People v. Rice (On Remand),* 235 Mich App 429, 440, 597 NW2d 843 (1999). The prosecution's theory was nonetheless supported by the evidence. Malice may be established by showing intent to kill, intent to inflict great bodily harm, or an act performed in wanton and willful disregard of the likelihood of causing death or great bodily harm. *Gafken*, 510 Mich at 511. Here, the prosecution proved malice beyond a reasonable doubt by establishing that defendant fired a firearm at the victim, an act inherently likely to cause death or great bodily harm. No evidence in the record suggests justification or excuse for the killing. Accordingly, the evidence at trial was sufficient to support defendant's conviction for second-degree murder beyond a reasonable doubt.

Defendant further challenges the sufficiency of the evidence supporting his conviction for felony-firearm. To sustain a conviction under MCL 750.227b, the prosecution must prove beyond a reasonable doubt that the defendant carried or possessed a firearm during the commission or attempted commission of a felony. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). The requirement is satisfied where the evidence demonstrates either actual, constructive, or joint possession of a firearm at the time of the underlying felony. *People v Johnson*, 293 Mich App 79, 82; 808 NW2d 815 (2011).

Here, the underlying felony was second-degree murder, which is indisputably a felony under Michigan law. See MCL 750.7; MCL 750.317. The record establishes that the homicide was perpetrated with a firearm. Testimony from multiple witnesses, including the victim's child and friend, as well as forensic evidence linking shell casings found at the scene to a firearm previously observed in defendant's possession, supports the conclusion that defendant carried or possessed a firearm during the fatal encounter.

The prosecution further introduced evidence of defendant's awareness and intentional concealment of the firearm following the homicide. Defendant's coded communications with his brother and acquaintance referencing the movement of a "joystick" and the subsequent actions taken to physically relocate the weapon are indicative of the requisite possessory control and support an inference of guilt. *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989) (constructive possession may be established by evidence that the defendant had control and dominion over the weapon).

Although the firearm itself was never recovered, this Court has held that direct physical evidence of the firearm is not required for conviction under the felony-firearm statute, so long as the prosecution presents credible testimony and circumstantial evidence establishing possession. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

Given the totality of the evidence, viewed in the light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt that defendant carried or possessed a firearm during the commission of second-degree murder. Hence, we conclude that the evidence was sufficient to support defendant's conviction for felony-firearm.

B. RIGHT TO COUNSEL

Defendant next asserts that the trial court erred in denying his motion to substitute counsel, arguing that his dissatisfaction with appointed counsel was so substantial that it caused his absence from a day of trial. In reviewing a trial court's decision on a motion to substitute counsel, this Court applies an abuse of discretion standard. *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001). An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *Unger*, 278 Mich App at 217. This deferential standard recognizes the trial court's superior position to evaluate both the credibility of the parties and the potential impact of substitution requests on the orderly administration of justice. *People v Strickland*, 293 Mich App 393, 397; 810 NW2d 660 (2011).

Both the United States Constitution and the Michigan Constitution guarantee a criminal defendant the right to the assistance of counsel. US Const, Am VI; Const 1963, art 1, § 20. Embedded in this right is the principle that a defendant who does not require appointed counsel may select retained counsel of his choosing. *US v Gonzalez-Lopez*, 548 US 140, 144; 126 S Ct 2557; 165 L Ed 2d 409 (2006). However, for indigent defendants, the right to counsel does not extend to the right to have counsel of choice appointed by the court. *People v McFall*, 309 Mich App 377, 382; 873 NW2d 112 (2015). Instead, the appointment of substitute counsel is governed by well-established criteria. The trial court must determine whether good cause exists for substitution and whether the substitution can be effected without unreasonably disrupting the judicial process. *Id*. at 382-383; *Strickland*, 293 Mich App at 398. Good cause for substitution may

be demonstrated where there is a bona fide dispute regarding fundamental trial tactics, a complete breakdown in the attorney-client relationship, or a showing that counsel is not acting with reasonable diligence or interest. *McFall*, 309 Mich App at 383. However, generalized dissatisfaction, a mere lack of confidence, or personality conflicts—absent a substantial basis—are insufficient to warrant substitution. *Id.*; see also *People v Buie* 298 Mich App 50, 67; 825 NW2d 361 (2012).

Here, defendant articulates several grounds for his asserted entitlement to substitute counsel. He contends that trial counsel failed to discuss certain potential witnesses with him, did not file a motion to suppress his police interview, and neglected to obtain cell phone ping data relevant to the defense. Defendant further complains about the late timing of counsel's appointment—just two months prior to trial—which, according to defendant, resulted in counsel's unfamiliarity with the case. Defendant also asserts that counsel's failure to provide documents necessary for his interlocutory appeal undermined his confidence in the representation. As further evidence of his dissatisfaction, defendant notes that he absented himself from trial proceedings on the second day, which he characterizes as reflecting an irreparable breakdown in the attorney-client relationship. However, the record does not indicate that defendant raised these concerns at a point early enough for the court to meaningfully address or investigate them, nor does it reflect any specific factual dispute regarding fundamental trial strategy or a total collapse of communication between defendant and counsel.

A trial court's obligation to consider a motion for substitution of counsel is tempered by the need to ensure the efficient administration of justice and avoid unnecessary delays. *McFall*, 309 Mich App at 382-383. In this instance, defendant made his request for new counsel on the first day of trial, after the parties and jurors were assembled and trial preparation was complete. Permitting substitution at such a late stage would have unavoidably delayed the proceedings, as newly appointed counsel would have needed time to become acquainted with the facts, review discovery, and develop an effective trial strategy. We have cautioned that substitution requests made on the eve of trial or under circumstances that would result in postponement are disfavored. *People v Echavarria*, 233 Mich App 356, 369; 592 NW2d 737 (1999). The trial court's finding that defendant's objections amounted primarily to general dissatisfaction—rather than a substantiated breakdown or a bona fide dispute over trial tactics—is supported by the record. Under these circumstances, the trial court acted within the bounds of its discretion in denying the motion. There is no basis on this record to conclude that the court's decision fell outside the range of reasonable and principled outcomes. *Unger*, 278 Mich App at 217, and therefore defendant is not entitled to relief on this issue.

## C. SENTENCING

Defendant asserts that his sentence for second-degree murder is disproportionate on the ground that he will, in all likelihood, be ineligible for parole within his lifetime. When reviewing a sentence within the minimum guidelines range, this Court applies the reasonableness standard articulated in *People v Steanhouse*, 500 Mich 453; 902 NW2d 327 (2017), and reaffirmed in *People v Posey*, 512 Mich 317, 326; 1 NW3d 101 (2023). The trial court's sentencing decision is reviewed for an abuse of discretion, which occurs only when the outcome falls outside the range of principled outcomes. *Steanhouse*, 500 Mich at 471; *People v Seadorf*, 322 Mich App 105, 109; 910 NW2d 703 (2017).

It is well-established that sentencing must be proportionate to the gravity of the offense and the particular circumstances of the offender. *Steanhouse*, 500 Mich at 460. While the sentencing guidelines are now advisory, the trial court's obligation to consult and consider the guidelines remains undiminished. *People v Teike*, 348 Mich App 520, 538; 19 NW3d 733 (2023). The guidelines advance the twin goals of consistency and individualized justice, providing a structured framework for judicial discretion while permitting departure where warranted by the facts. Appellate courts are not required to affirm within-guidelines sentences in the absence of scoring error or reliance on inaccurate information, but such sentences are rebuttably presumed proportionate. *Id*. To overcome this presumption of proportionality, a defendant must establish unusual circumstances that render the presumptively proportionate sentence disproportionate. *People v Bowling*, 299 Mich App 552, 558; 830 NW2d 800 (2013). Relevant sentencing considerations—reformation, protection of society, discipline, and deterrence—are not exhaustive or mandatory in every case. *People v Boykin*, 510 Mich 171, 183-184; 987 NW2d 58 (2022). The trial court's analysis must be rooted in the record and tailored to the case's facts, the offender's background, and the broader purposes of the criminal law.

Here, the minimum sentencing guidelines range for defendant's conviction of second-degree murder was 365 months to 1200 months, or life. The trial court imposed a minimum term of 60 years (720 months) and a maximum of 1200 months, squarely within the applicable guidelines. The resulting sentence is, therefore, presumptively proportionate. The record demonstrates that the trial court evaluated the nature and circumstances of the offense, together with defendant's age, history, and relevant characteristics. To overcome the presumption of proportionality, defendant bears the burden of demonstrating an unusual circumstance not adequately contemplated by the guidelines or addressed by the trial court.

Defendant posits that his projected parole eligibility date—2092, when he would be over 100 years of age—constitutes an unusual circumstance rendering his sentence disproportionate. He maintains that, functionally, the sentence operates as life without parole, calling into question the sentence's rehabilitative and deterrent efficacy for an older offender. This line of argument, however, has been expressly rejected by this Court in *People v Purdle (On Remand)*, 350 Mich App 446, 458; 32 NW3d 479 (2024), wherein we stated, "In light of the seriousness of the offense and Purdle's criminal history, we conclude that his race and his age at the time of sentencing do not render his within-guidelines sentence disproportionate. Nor is such an argument sufficient to overcome the presumption that his within-guidelines sentence is proportionate." See also, *Bowling*, 299 Mich App at 558-559. Moreover, *Purdle* reaffirmed that advanced age does not negate the penological objectives of sentencing—rehabilitation, protection of society, deterrence, and retribution. *Id*. at 457. Even where parole eligibility is remote, the sentence may advance these aims by reflecting the offense's seriousness, safeguarding the public, and deterring similar conduct. The trial court must weigh these considerations against any mitigating factors; here, the record reveals no such factor sufficient to disturb the presumption of proportionality.

Accordingly, defendant's age does not render his sentence disproportionate. He has failed to identify any unusual circumstance sufficient to overcome the presumption of proportionality attendant to his within-guidelines sentence. *People v Burkett*, 337 Mich App 631, 637; 976 NW2d 864 (2021). The record confirms that the trial court considered all pertinent factors and exercised

its discretion in accordance with Michigan law and controlling precedent. No abuse of discretion is evident, and the sentence is affirmed as reasonable and proportionate.

Affirmed.

/s/ Matthew S. Ackerman
/s/ Stephen L. Borrello
/s/ Daniel S. Korobkin