

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BILLY J. ALEXANDER,

Defendant-Appellant.

UNPUBLISHED

June 27, 1997

No. 192385

Recorder's Court

LC No. 95-007687

Before: White, P.J., and Bandstra and Smolenski, JJ.

PER CURIAM.

Defendant was convicted in a bench trial of two counts of felonious assault, MCL 750.82; MSA 28.277, one count of assault with intent to commit armed robbery, MCL 750.89; MSA 28.284 and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to two to four years in prison for the felonious assault convictions, ten to twenty years in prison for the assault with intent to commit armed robbery conviction, and two years in prison for the felony firearm conviction. The felonious assault and assault with intent to commit armed robbery sentences are to be served concurrently, but consecutive to the felony firearm sentence. We affirm.

Defendant argues that there was insufficient evidence to convict him of assault with intent to commit armed robbery. We disagree. In reviewing the sufficiency of the evidence, we view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Medlyn*, 215 Mich App 338, 340; 544 NW2d 759 (1996). The elements of assault with intent to commit armed robbery are: (1) an assault with force or violence, (2) with the intent to rob and steal, and (3) the attacker was armed. *People v Cotton*, 191 Mich App 377, 392; 478 NW2d 681 (1991); *People v Smith*, 152 Mich App 756, 761; 394 NW2d 94 (1986). In the instant case, there was testimony that defendant pointed a gun at the victim while demands that she turn over her gold chains and purse were made. Under the aider and abettor statute, it is immaterial who, defendant or the other two men he was with, actually made the demands. MCL 767.39; MSA 28.979. Defendant's

intent to steal and rob can be inferred from the circumstances. *People v Harris*, 110 Mich App 636, 641; 313 NW2d 354 (1981). Further, the court's confusion regarding which defendant asked for the purse and which for the chains does not require reversal.

Defendant next argues that the assault with intent to commit armed robbery was against the great weight of the evidence. We disagree. After reviewing the whole body of proofs, *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993), we conclude that defendant's argument is meritless. As noted above, the record indicates that defendant pointed a gun at the victim while demands were made that the victim turn over her possessions.

Finally, defendant argues that his sentence violates the principle of proportionality. We disagree. Defendant's sentence was within the sentencing guidelines range, and is therefore presumed to be neither excessively severe nor unfairly disparate. *People v Albert*, 207 Mich App 73, 75; 523 NW2d 825 (1994). Defendant has presented no unusual circumstances that persuade us that his sentence was not proportionate to the offender and offense. *People v Sharp*, 192 Mich App 501, 505-506 (1992); 481 NW2d 773 (1992); *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990).

Affirmed.

/s/ Helene N. White

/s/ Richard A. Bandstra

/s/ Michael R. Smolenski