

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEANDRE SIEBERT,

Defendant-Appellant.

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UNPUBLISHED

October 1, 1999

No. 206334

Recorder's Court

LC No. 97-001994

Before: Collins, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529; MSA 28.797. The trial court sentenced defendant to life imprisonment. Defendant appeals as of right, and we affirm.

I

Defendant first claims that the evidence was insufficient to support his conviction. When ascertaining whether sufficient evidence was presented at trial to support a conviction, a Court must 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. Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

The elements of armed robbery are (1) an assault and (2) a felonious taking of property from the victim's person or presence while (3) armed with a weapon. *People v Smielewski*, 235 Mich App 196, 207; 596 NW2d 636 (1999). Moreover, one who procures, counsels, aids, or abets in the commission of an offense may be convicted and punished as if he committed the offense directly. MCL 767.39; MSA 28.979; *Smielewski, supra* at 202-203. To be liable as an aider and abettor, the prosecutor must show the following: (1) the charged crime was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that aided and assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement. *Id.* at 207. An aider and abettor's state of mind may be inferred from all the facts and circumstances. Factors that may

be considered include a close association between the defendant and the principal, the defendant's participation in the planning or execution of the crime, and evidence of flight after the crime. *People v Turner*, 213 Mich App 558, 568-569; 540 NW2d 728 (1995).

Defendant contends that, at most, the evidence establishes only his presence at the store during the robbery. A defendant's mere presence at a crime, even with knowledge that the offense is about to be committed, is not enough to make him an aider and abettor. *People v Youngblood*, 165 Mich App 381, 386; 418 NW2d 472 (1988). However, we cannot agree with defendant that the evidence demonstrates only that he was present while the crime occurred.

Witnesses identified defendant as one of the men running out of the store after the robbery was committed. The car in which the robbers made their escape belongs to defendant. Defendant first told police that he was not present at all during the robbery, but had lent his car to Joseph Smith and Corey Nelson. He later admitted that he was with Smith and Nelson at the time in question, but claimed that he did not know that the other two men intended to commit a robbery. However, when they were arrested several days later, defendant and Nelson were together in defendant's car. The jury could have reasonably concluded that, if defendant's version of events were true, he would not subsequently have associated with Nelson. Furthermore, in one of his statements defendant disclosed that he was aware that Smith usually carried a gun. We believe that the foregoing evidence, viewed in a light most favorable to the prosecution, was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant knowingly assisted in the commission of the charged robbery. See *Carines*, *supra*.

Defendant additionally asserts that the prosecution failed to establish that any money was taken. We disagree. Testimony indicated that the store's money was normally kept in a safe located behind the counter where the victim, who had been shot, was found. The door to the safe was open, and the safe was empty. The victim's son testified that on a Sunday afternoon the safe normally would have contained between fifteen hundred and two thousand dollars. The cash register drawer was open as well and contained only some change and a few one dollar bills. This evidence, viewed in the light most favorable to the prosecution, was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that money was taken from the victim. See *id*.

## II

Defendant also argues that the trial court abused its discretion in imposing a life sentence. A given sentence can be said to constitute an abuse of discretion if that sentence violates the principle of proportionality, which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

Defendant notes that the sentencing guidelines recommended a minimum sentence of five to fifteen years. However, the crucial test for proportionality is not whether the sentence departs from, or adheres to, the recommended range under the sentencing guidelines, but whether it reflects the seriousness of the matter. A court may justify an upward departure by reference to factors considered,

but adjudged inadequately weighed, within the guidelines, as well as by introducing legitimate factors not considered by the guidelines. *People v Castillo*, 230 Mich App 442, 447-448; 584 NW2d 606 (1998).

The trial court explained that it was departing from the guidelines because (1) defendant either shot the victim himself or knew that an accomplice would use the gun; (2) the victim was shot in the back after he had surrendered his property; and (3) the victim, formerly a healthy fifty-four-year-old man, is now a quadriplegic who has had a leg amputated. The court's reasons all concern the nature and severity of the crime, both of which are valid sentencing considerations. *Id.* Considering the seriousness of this offense and defendant's prior record, we conclude that the life sentence is proportionate to the seriousness of the circumstances surrounding the offense and the offender. See *Milbourn, supra*.

Affirmed.

/s/ Jeffrey G. Collins  
/s/ David H. Sawyer  
/s/ Mark J. Cavanagh