STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 21, 2000
v	No. 211500 Oakland Circuit Court
DERRICK BUCKHANNON, Defendant-Appellant.	LC No. 97-156300-FC

Before: Holbrook, Jr., P.J., and Kelly and Collins, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for armed robbery, MCL 750.529; MSA 28.797. Defendant was sentenced to eight to twenty years' imprisonment. We affirm.

Defendant's conviction stems from an incident that occurred in the early morning hours of October 18, 1997. After the victim left work at approximately 2:15 a.m., she was driven to her mother's house by a friend. The friend waited in his car while the victim gathered up some belongings at the house. When the victim returned to the car, she noticed three men approaching the vehicle. The victim's friend drove off, leaving the victim. One of the three men then approached the victim, pointed a gun at her, and took her purse and earrings.

Two Oak Park police officers on patrol in a marked police cruiser equipped with a video camera responded to the robbery call. When the officers came upon defendant's vehicle, which was traveling in the vicinity of the robbery, the occupants of the car began making motions as if they were picking something up or putting something down on the floorboard. Defendant was driving the vehicle. Thinking that the men looked suspicious, the officers activated their cruiser's lights and siren. Defendant initially stopped his car, but when one of the officers approached, defendant and his three companions drove off. During the ensuing chase, a gun and a purse were thrown from the fleeing car. The suspects were able to escape on foot after the car crashed into a fence post. Defendant was arrested when he appeared at a police station to report that his car had been stolen.

Defendant first argues that insufficient evidence was presented to find him guilty beyond a reasonable doubt of armed robbery. Defendant claims that the evidence presented at trial did not show

that defendant was involved in the planning and commission of the robbery, but rather, that defendant's involvement was limited to an accessory after the fact. We disagree. "In reviewing a sufficiency of the evidence question, this Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the crime were proved beyond a reasonable doubt." *People v Warren*, 228 Mich App 336, 343; 578 NW2d 692 (1998). In making this examination, we do "not interfere with the jury's role of determining the weight of the evidence or the credibility of the witnesses." *Id.* Accord *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

"'The elements of armed robbery are: (1) an assault, (2) a felonious taking of property from the victim's presence or person, (3) while the defendant is armed with a weapon described in the statute.'" *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Turner*, 213 Mich App 558, 569; 540 NW2d 728 (1995). Defendant was prosecuted under an aiding and abetting theory. MCL 767.39; MSA 28.979.[1]

> To support a finding that a defendant aided and abetted a crime, the prosecutor must show that (1) the crime charged was committed by defendant or some other person, (2) the defendant performed acts or gave encouragement that 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. An aider and abettor's state of mind may be inferred from all the facts and circumstances. [*Turner, supra* at 568.]

Viewing the evidence in the light most favorable to the prosecution, we conclude that sufficient evidence was presented to establish defendant's guilt beyond a reasonable doubt of aiding and abetting in this armed robbery. The victim testified that she was robbed at gun point. Defendant told the investigating detective that he drove the car that followed the victim and her friend when they left the victim's workplace. Defendant parked his car out of direct sight of the victim and her friend when the two stopped at the victim's mother's house. Defendant admitted that he knew his three companions were up to no good and that the victim's friend was the target. When defendant's car was stopped after the robbery, defendant drove off before the officer reached the car. Objects were thrown from the fleeing car. Defendant also fled on foot after crashing his car into a fence post.

Given this evidence, we conclude that a rational trier of fact could find that an armed robbery was committed, that defendant provided assistance to the principals before, during, and after the crime, and that defendant intended the armed robbery or knew that the other three men intended the armed robbery. *Id.*

Defendant next argues that the sentence imposed violates the principle of proportionality. We disagree. Sentence disproportionality claims are reviewed for an abuse of discretion. *People v Alexander*, 234 Mich App 665, 679; 599 NW2d 749 (1999). "An abuse of discretion may be found where a sentence is disproportionate 'to the seriousness of the circumstances surrounding the offense and the offender.'" *Id.*, quoting *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

Defendant's eight-year minimum sentence falls at the lower end of the guideline range of five to twenty-five years, and is therefore presumptively proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). Further, defendant has failed to established any unusual circumstances that would overcome this presumption of proportionality. Under these circumstances, we are satisfied that defendant's sentence reflects the nature and severity of the crime, *People v Houston*, 448 Mich 312, 319; 532 NW2d 508 (1995), and does not constitute an abuse of discretion. *Milbourn*, *supra*.

Next, defendant argues that reversal is required because not only did he not waive his *Miranda*[2] rights, but he also specifically invoked his Fifth Amendment right to counsel. We disagree. Defendant gave two statements to the police. The prosecution presented evidence that a *Miranda* warning was given before each interrogation, which defendant effectively waived. *People v Cheatham*, 453 Mich 1, 13; 551 NW2d 355 (1996). The detective who questioned defendant in both instances testified that he advised defendant of his *Miranda* rights by using a form that contained a list of *Miranda* rights and waivers. A photocopy of that form was admitted as evidence in defendant's trial. The detective also testified that defendant waived his *Miranda* rights. Further, there is no evidence of police coercion. *People v Sexton*, 236 Mich App 525, 535; 601 NW2d 399 (1999). Defendant's argument that he did not waive his rights because he did not sign the form at issue is unpersuasive.

We also reject what appears to be a due process challenge[3] to the voluntaries of the two statements. *Id.* at 536-537. The record does not reveal any circumstances surrounding the interrogation that raise questions regarding the voluntaries of the statements under a due process analysis. *Id.* at 540.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly
/s/ Jeffrey G. Collins

[1] The statute provides: "Every person concerned in the commission of an offense whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense."

[2] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

[3] We draw the conclusion that defendant is raising a due process challenge in his supplemental brief on appeal due to his citation to and discussion of *Jackson v Denno*, 378 US 368; 84 S Ct 1774; 12 L Ed 2d 908 (1964).