

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAZJUAN D. COPELAND,

Defendant-Appellant.

UNPUBLISHED

June 13, 2000

No. 212275

Wayne Circuit Court

LC No. 97-006877

Before: Murphy, P.J., and Collins and Owens, JJ.

PER CURIAM.

Defendant was convicted by a jury of carjacking, MCL 750.529a; MSA 28.797(a), and assault with intent to rob while armed, MCL 750.89; MSA 28.284. He was sentenced to concurrent terms of eighteen to thirty-six years for the carjacking conviction and five to ten years for the assault with intent to rob conviction. He appeals as of right. We affirm.

Defendant first argues that his dual convictions for carjacking and assault with intent to rob while armed violate the constitutional prohibitions against double jeopardy. US Const, Am V; Const 1963, art 1, § 15. Judicial examination of the scope of double jeopardy protection under both the state and federal constitutions is confined to a determination of legislative intent. *People v Sturgis*, 427 Mich 392, 400; 397 NW2d 783 (1986). Legislative intent under the state constitution is determined by “traditional means . . . such as the subject, language, and history of the statutes.” *People v Denio*, 454 Mich 691, 708; 564 NW2d 13 (1997). This Court determines legislative intent with regard to the federal constitution by using the same-elements test of *Blockburger v United States*, 284 US 299; 52 S Ct 180; 76 L Ed 306 (1932); that is, the reviewing court determines “whether each provision requires proof of a fact which the other does not.” *Id.* at 304.

In *People v Parker*, 230 Mich App 337; 584 NW2d 336 (1998), this Court considered whether dual convictions for carjacking and armed robbery violate the federal and state double jeopardy protections. This Court determined that, although the offenses of carjacking and armed robbery each involved property loss to a person, the carjacking statute was intended to prohibit takings accomplished with force or the mere threat of force. In contrast, the language of the armed robbery statute indicates that the Legislature intended to prohibit takings accomplished by an assault and the

wielding of a dangerous weapon. *Id.* at 343. Furthermore, the carjacking statute specifically contemplates two separate convictions arising out a single transaction. See MCL 750.529a(2); MSA 28.797(a)(2); *Parker, supra* at 343-344.

The analysis in *Parker* is equally applicable to the present case, wherein defendant was convicted of assault with intent to rob the victim of her money while he was armed with a weapon and of taking the victim's vehicle by using force, threat of force, or putting in fear. Defendant's dual convictions and sentences for these two offenses therefore do not violate the double jeopardy protection under Michigan's constitution.

Application of the federal double jeopardy test likewise leads us to conclude that defendant's convictions for assault with intent to rob while armed and carjacking do not offend the Double Jeopardy Clause of the federal constitution. The offense of assault with intent to rob while armed requires proof that the defendant was either armed with a dangerous weapon or had an article that the defendant used or fashioned in a manner to lead the victim to believe it to be a dangerous weapon. MCL 750.89; MSA 28.284. The offense of carjacking does not require that the perpetrator be armed, but only that force, violence, or threat of force or violence be used to accomplish the taking of an automobile. MCL 750.529a; MSA 28.797(a). Therefore, the assault with intent to rob while armed and carjacking statutes require proof of a different element. Therefore, under the *Blockburger* test, convictions for both of these offenses do not violate the federal constitution's double jeopardy protections.

Next, defendant argues that the eighteen to thirty-six year sentence that he received for his carjacking conviction violates the principle of proportionality; that is, the requirement that the sentence must be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). We disagree.

While acknowledging that there are no sentencing guidelines for carjacking, defendant contends that the trial court should have considered the guidelines for armed robbery or assault with intent to rob while armed. Defendant cites no authority to support this position and we therefore consider it abandoned. See *People v Hill*, 221 Mich App 391, 397 n 2; 561 NW2d 862 (1997). Further, the second edition of the sentencing guidelines specifically provide that the guidelines are inapplicable to offenses that were not included. Michigan Sentencing Guidelines (2d ed, 1988), p 1; *Hill, supra*. Where the sentencing guidelines do not cover a particular offense, this Court reviews the sentences imposed solely for an abuse of discretion. *People v Compagnari*, 233 Mich App 233, 235-236; 590 NW2d 302 (1998). In the context of sentencing, an abuse of discretion occurs when the sentence is not proportionate to the seriousness of the circumstances surrounding the offense and the offender. *Milbourn, supra* at 636.

We conclude that that the trial court did not abuse its discretion in sentencing defendant to a prison term of eighteen to thirty-six years for the carjacking conviction. The court noted the severity and seriousness of the crime of carjacking, observing that the Legislature enacted MCL 750.529a; MSA 28.797(a) to address this societal concern and that the offense is punishable by up to life imprisonment. The court also noted that, in the present case, the victim testified that defendant had stuck a gun at her head before taking her vehicle and that she has had nightmares about the crime. The

severity of the offense, defendant's conduct during the commission of the offense, and the effect on the victim are all permissible considerations at sentencing. *Compagnari, supra* at 236; *People v Rice (On Remand)*, 235 Mich App 429, 446; 597 NW2d 843 (1999). Defendant's carjacking sentence, while harsh, does not violate the principle of proportionality.

Finally, defendant argues that the trial court abused its discretion by denying his motion to suppress his custodial confession on the basis that it was not voluntarily made. Statements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly and intelligently waived his Fifth Amendment rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602, 1612; 16 L Ed 2d 694 (1966). When a defendant challenges the admissibility of his statements, the trial court must hear testimony regarding the circumstances of the defendant's statement outside the presence of the jury. *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2 87 (1965). When reviewing a trial court's determination that a defendant's confession was voluntary, this Court must examine the entire record and make an independent determination of the issue as a question of law. *People v Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997). However, deference is given to the trial court's assessment of the weight of the evidence and credibility of the witnesses, and the trial court's findings will not be reversed unless they are clearly erroneous. *Id.*

The trial court considered this issue at a hearing outside the presence of the jury. The court heard testimony from Detroit Police Officer Kenneth Williams, the officer who took defendant's statement, and from defendant himself. Defendant and Officer Williams directly contradicted each other on several key points, including whether defendant asked to speak to an attorney or asked to speak to his parents before being interrogated, whether Officer Williams told defendant what to write down in his narrative answers, and whether Officer Williams told defendant that he had been positively identified and would probably wind up in a prison where he would be sexually assaulted unless he cooperated. Affording deference to the trial court's assessment of credibility, *Howard, supra* at 543, we affirm the court's finding that defendant's statement was voluntarily given.

Affirmed.

/s/ William B. Murphy

/s/ Jeffrey G. Collins

/s/ Donald S. Owens