STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 5, 2000
v	No. 215233 Wayne Circuit Court
EDDIE J. REED, Defendant-Appellant.	Criminal Division LC No. 97-010209

Before: Bandstra, C.J., and Saad and Meter, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529; MSA 28.797, and carjacking, MCL 750.529a; MSA 28.797(a). Defendant was sentenced to six to thirty years' imprisonment for armed robbery and five to thirty years' imprisonment for carjacking, with the sentences to run consecutively. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred by not suppressing his confession because it was not given voluntarily due to defendant's vulnerable physical and psychological condition. Determination of a confession's voluntariness is a matter of law for the court's determination. *People v Mack*, 190 Mich App 7, 17; 475 NW2d 830 (1991). The prosecution bears the burden of showing voluntariness by a preponderance of the evidence. *Id.* This Court conducts a de novo review of the record when analyzing a challenge to the voluntariness of a statement. *People v Kowalski*, 230 Mich App 464, 472; 584 NW2d 613 (1998). However, we will not disturb the court's factual findings unless they are clearly erroneous. *Id.*

Circumstances to consider when determining voluntariness include, but are not limited to, "the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse." *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). This analysis is based on the totality of the circumstances and the presence or lack of any single factor is not sufficient by itself to be conclusive of voluntariness. *People v Sexton (After*

Remand), 461 Mich 746, 753; 609 NW2d 822 (2000). "Further, if resolution of a disputed factual question turns on the credibility of witnesses . . . we will defer to the trial court, which had a superior opportunity to evaluate these matters." *Id.* at 752.

In this case the question of voluntariness clearly turns on the credibility of the interviewing officer and defendant. The officer testified that: (1) he read defendant his rights verbatim from a form titled "Constitutional Rights Certificate of Notification;" (2) defendant also read each right out loud and placed his initials next to all of the listed rights; (3) no force or abuse was used; (4) defendant was cooperative and wrote out his own version of events; and (5) defendant indicated on the form that he was treated by the officer with respect. Defendant's testimony sharply contrasted with the officer's. Defendant testified that: (1) the officer hit him as soon as they were alone; (2) after a few more hits, the officer told defendant to write what he was told; (3) the officer read a codefendant's statement to him for defendant to write down; and (4) the officer hit defendant in the stomach for another five to ten minutes after defendant had written out the confession. In light of the trial court's finding that defendant's testimony was "incredulous," a finding to which we defer, we conclude that voluntariness was proved by a preponderance of the evidence. The trial court properly refused to suppress defendant's confession.

Next, defendant argues that his sentence violated the principle of proportionality. We review challenges to the sentence assessed for abuse of discretion. *People v Cain*, 238 Mich App 95, 130; 605 NW2d 28 (1999). A court abuses its discretion in assessing sentence if the sentence violates the principle of proportionality, which requires that the sentence assessed be proportionate to both the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

Defendant argues that the trial court erred in not considering the sentence of his accomplice, who received a sentence of two to twenty years' imprisonment. A sentencing court is not required to consider the sentence of a coparticipant. *In re Jenkins*, 438 Mich 364, 376; 475 NW2d 279 (1991). "Sentences must be individualized and tailored to fit the circumstances of the defendant and the case." *Id.* Defendant's argument that his sentence is too harsh in light of the codefendant's lesser sentence is without merit.

Defendant also argues that he should not have been given consecutive sentences and that his aggregated sentences, totaling eleven years' imprisonment, exceed the maximum minimum sentence in the guidelines for each offense taken individually. "Absent statutory authority for imposing a consecutive sentence, it is the rule in this state to impose concurrent sentences." *People v Sawyer*, 410 Mich 531, 534; 302 NW2d 534 (1981). In this case, however, there is specific statutory authority for consecutive sentences when carjacking and another offense are committed in the same transaction. MCL 750.529a(2); MSA 28.797(a)(2).

Here, defendant was convicted of armed robbery and carjacking, which arose out of the same transaction. The sentencing judge had statutory authority and discretion to impose consecutive sentences. Further, consecutive sentences must be considered separately when evaluating proportionality. *People v Hill*, 221 Mich App 391, 397; 561 NW2d 862 (1997). "[W]here a defendant receives consecutive sentences and neither sentence exceeds the maximum punishment allowed, the aggregate of the sentences will not be disproportionate." *People v*

Miles, 454 Mich 90, 95; 559 NW2d 299 (1997). Defendant received a minimum sentence of six years for armed robbery and five years for carjacking. Both sentences were within the guidelines range of 36 to 96 months. Neither sentence exceeds the maximum minimum sentence allowed by the guidelines, and the aggregate of eleven years is not considered disproportionate. *Id*.

Defendant also argues that the sentence was disproportionate because of the lack of physical force used against the victim. While we agree with defendant's statement about the use of force on the victim, this fails to recognize that the subsequent high-speed chase jeopardized the lives and property of many other people. See *People v Terry*, 224 Mich App 447, 456; 569 NW2d 641 (1997) (high speed chase following a carjacking was considered for proportionality). The sentencing court characterized defendant's acts as reprehensible. We see nothing in the record that causes us to question the accuracy of the court's characterization. No abuse of discretion is shown.

We affirm.

/s/ Richard A. Bandstra
/s/ Henry William Saad
/s/ Patrick M. Meter