STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 4, 2004
v	No. 244938 Oakland Circuit Court
DARRY DEAN RABIDEAU, Defendant-Appellant.	LC No. 2001-180109-FC

Before: Gage, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529, and possession of marijuana, MCL 333.7403(2)(d).[1] He was sentenced as an habitual offender, fourth offense, MCL 769.12, to a prison term of forty-six to seventy-five years' imprisonment for the armed robbery conviction and one year for the possession of marijuana conviction. He appeals as of right. We affirm.

I. Underlying Facts

Defendant's convictions arise from his participation in an armed robbery with codefendant Dwayne Scott Berry. Codefendant Berry was present at the victim's home when the victim sold a vintage vehicle to Berry's acquaintance. Consequently, Berry knew that $16,000 cash was present in the victim's home on the night of the armed robbery. Berry enlisted defendant to drive him to the victim's residence. Although Berry entered the residence alone, he was unable to contain both the victim and the victim's wife. When the victim's wife fled the scene, Berry called out to defendant to catch her. The victim's home was built on 2 ½ acres of secluded, wooded property. Defendant was unable to locate the victim's wife and returned to the victim's garage. There, Berry had subdued the victim on the floor of the garage.

Berry reportedly instructed defendant to guard the victim while he went back into the victim's home. The victim testified that defendant kicked him during this time period. The victim was taken to the back area of the property by defendant Berry and instructed to call out to

[1] An additional charge of felony-firearm, MCL 750.227b, was dismissed.

his wife or he would be killed. Police arrived at the home, and defendant fled. Defendant was apprehended later that evening. The $16,0000 cash was missing from the home.

In custody, a Southfield police detective interviewed defendant. After waiving his *Miranda*[2] rights, defendant gave oral and written statements. Initially, defendant indicated that codefendant Berry said that he needed to pick up some money from someone in Southfield. When they arrived at the victim's house, defendant stayed in the car. Defendant stated that he saw Berry and the victim fighting by the garage and heard Berry call for help. Berry told defendant to find the victim's wife, but he could not locate her. According to defendant, when he returned to the house, Berry went to look for the victim's wife while he guarded the victim. He ran after the police arrived.

In a subsequent statement given the next day, defendant admitted that, when he picked up Berry, he knew that they were going to rob an "older" victim of $16,000 cash proceeds from the sale of a car. Defendant stated that Berry brought along a black handgun with white grips. When they arrived at the victim's house, defendant got out of the truck, put a stocking over his head to conceal his identity, and wore gloves to avoid leaving any fingerprints. Defendant stated that he got involved in the altercation between the victim and Berry, and dragged the victim onto the deck from the garage. Defendant stated that he kept the victim down by putting his foot on the victim's head/face while Berry went back into the house. When Berry returned, defendant went to look for the victim's wife and was subsequently arrested.

II. Motion to Suppress

Defendant first claims that the trial court clearly erred by denying his motion to suppress his statements to the police. Defendant asserts that his statements were induced by the denial of counsel and by prearraignment delay. Whether a defendant's statement was knowing, intelligent, and voluntary is a question of law that a court evaluates under the totality of the circumstances. *People v Cheatham*, 453 Mich 1, 27, 44; 551 NW2d 355 (1996); *People v Garvin*, 235 Mich App 90, 96; 597 NW2d 194 (1999). 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 of fact will not be disturbed unless they are clearly erroneous. *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000); *People v Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997). A finding is clearly erroneous if it leaves the reviewing court with a definite and firm conviction that a mistake has been made. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997).

Statements of a defendant made during a custodial interrogation are inadmissible unless the defendant voluntarily, knowingly, and intelligently waived his Fifth Amendment rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966); *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999). Whether a statement was voluntary is determined by examining police conduct. Whether it was made knowingly and intelligently depends in part upon the defendant's capacity. *Howard, supra* at 538. The prosecutor must

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

establish a valid waiver by a preponderance of the evidence. *Abraham, supra* at 645. In *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988), our Supreme Court set forth the following nonexhaustive list of factors that a trial court should consider in determining whether a statement is voluntary:

> [T]he 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. [*Id.* at 334.]

No single factor is conclusive. *Id.*; *People v Fike*, 228 Mich App 178, 181-182; 577 NW2d 903 (1998).

Here, the record does not support defendant's claim that he was denied counsel, or that his statements were otherwise involuntary. Defendant and the police detective, who took his statements, testified at the hearing regarding the interviews and the statements. Contradictory testimony regarding defendant's alleged requests for an attorney was presented. The trial court considered the largely contradictory testimony and concluded that defendant's account was not credible and that the statements were voluntary. As previously indicated, this Court will defer to the "trial court's superior ability to view the evidence and witnesses." *People v Peerenboom*, 224 Mich App 195, 198; 568 NW2d 153 (1997).

Furthermore, viewing the totality of the circumstances, the trial court did not clearly err in finding that defendant's statements were voluntarily given. It is undisputed that, before defendant gave each statement, he read his constitutional rights, indicated that he understood those rights, initialed each right, and signed a written waiver. Defendant was not threatened, abused, or promised anything in exchange for his statements. There is no evidence that defendant was deprived of sleep, food or drink. Although defendant consumed two beers and smoked marijuana on the night before his first statement, there was no evidence that he was intoxicated, ill or under the influence of drugs when he gave his statements. Additionally, the record demonstrates that defendant was forty years old, had earned his GED, and could read and write. There is no indication that defendant had any learning disabilities, psychological problems, or was otherwise unaware and not acting of his own free will. Also, the record shows that defendant had previous experience with the police and the criminal process and was familiar with *Miranda* rights.

In addition, the two interviews were conducted in separate sessions and were not prolonged, and there is simply no evidence that defendant was coerced into making inculpatory statements during the interviews. The second interview occurred after defendant had slept and been provided snacks. Also, telephones were available to defendant in his detention area. Although defendant was arrested several hours before giving his first statement, there is no indication that he was coerced into confessing to a crime he did not commit because of improper

delay or that he was otherwise prohibited from acting of his own free will. Viewing the totality of the circumstances, the record does not leave us with a firm and definite conviction that a mistake has been made. *Givans, supra*. The trial court did not clearly err by denying defendant's motion to suppress his statements to the police.

III. Sufficiency of the Evidence

Defendant argues that the evidence was insufficient to support his conviction for armed robbery. We disagree. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this 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. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses. *Id.* at 514. Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

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 Rodgers*, 248 Mich App 702, 707; 645 NW2d 294 (2001). At trial, the prosecutor advanced alternative theories that defendant was guilty either as a principal or an aider and abettor. A person who aids or abets the commission of a crime may be convicted and punished as if he directly committed the offense. MCL 767.39. To support a finding that a defendant aided and abetted, "the prosecution must show that (1) the crime charged was committed by the 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." *People v Izarraras-Placante*, 246 Mich App 490, 495-496; 633 NW2d 18 (2001) (citation omitted).

"Aiding and abetting" describes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds that might support, encourage, or incite the commission of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999); *People v Rockwell*, 188 Mich App 405, 411-412; 470 NW2d 673 (1991). "The quantum of aid or advice is immaterial as long as it had the effect of inducing the crime." *People v Lawton*, 196 Mich App 341, 352; 492 NW2d 810 (1992). Further, an aider and abettor's state of mind may be inferred from all the facts and circumstances, including 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. *Carines, supra* at 758.

Here, viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to infer all the necessary elements of armed robbery. The evidence indicated that defendant was an active participant in the execution of the armed robbery. In a statement given to the police, defendant admitted that he accompanied Berry to the victim's house for the purpose of stealing the $16,000 and that defendant was armed with a gun. Testimony revealed that Berry pointed a handgun at the victim, and that both men threatened to

kill the victim and physically attacked him. There was evidence that defendant guarded the victim while Berry went back into the house. A reasonable jury could infer that, during this period, Berry took the $16,000. Although the victim did not actually observe the taking, he testified that the money was there before the men arrived and was missing after they assaulted him and fled. Defendant's challenge to the credibility of the testimony by the victim and his wife was assessed and rejected by the jury. See *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999). In sum, the evidence was sufficient to enable a rational jury to conclude beyond a reasonable doubt that defendant committed the crime of armed robbery.

IV. Sentence

We reject defendant's claim that he is entitled resentencing because his minimum sentence of forty-six years for armed robbery is disproportionate to the circumstances of the offense and the offender, and constitutes cruel and unusual punishment. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Defendant's minimum sentence is within the applicable statutory sentencing guidelines range. Under the sentencing guidelines statute, this Court must affirm sentences within the applicable sentencing guidelines range absent an error in the scoring of the guidelines or reliance on inaccurate information in determining the sentence. MCL 769.34(10); *People v Babcock*, 469 Mich 247, 261; 666 NW2d 231 (2003). On appeal, defendant has not alleged that the guidelines were erroneously scored or that the trial court relied on inaccurate information in determining his sentence. Therefore, defendant is not entitled to resentencing.

Affirmed.

/s/ Hilda R. Gage
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood