

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MANAL PAULS,

Defendant-Appellant.

UNPUBLISHED

May 14, 2009

No. 276375

Oakland Circuit Court

LC No. 2006-206437-FC

Before: Whitbeck, P.J., and O'Connell and Owens, JJ.

PER CURIAM.

Defendant Manal Pauls appeals as of right his conviction for armed robbery,¹ two counts of assault with intent to rob while armed,² and possession of marijuana second or subsequent offense.³ The trial court sentenced Manal Pauls as an habitual offender⁴ to three concurrent terms of 18 to 30 years' imprisonment for armed robbery and assault with intent to rob while armed, with credit for 103 days served. For possession of marijuana, the trial court sentenced Manal Pauls to 16 to 24 months' imprisonment, with credit for 103 days served. We affirm.

I. Basic Facts And Procedural History

On December 18, 2005, Zoup restaurant in Troy, Michigan, located on Maple and Coolidge roads, was robbed. Kendra Denisio, the Zoup restaurant manager on duty that night, closed the restaurant for the evening and locked the public doors. Jacqueline Keillor and Michael McMacken worked with Denisio that night. Keillor was responsible for taking out the trash, and the restaurant had a policy that the trash went out the back door and that the door remained locked while the person taking it out was outside. Denisio opened the back door, allowing Keillor to take the trash outside to the dumpster, and then Denisio relocked the door and waited for Keillor to return. As Denisio reopened the door for Keillor, a man wearing a ski mask came around the corner and forced Keillor back into the restaurant. With a gun pointed at Keillor's back, the robber ordered both women onto the ground. When the women did not move

¹ MCL 750.529.

² MCL 750.89.

³ MCL 333.7403(2)(d); MCL 333.7413(2).

⁴ MCL 769.10.

fast enough, the robber “racked” the gun, which Denisio described as gray and silver in color, 8-10 inches long, and in the style of a semi-automatic. The robber ordered Keillor to open the restaurant’s safe, to which Keillor responded that she could not because she did not have access to the safe; Denisio notified the robber that only she could open the safe. A noise from another part of the restaurant alerted the robber that someone else was in the restaurant; he investigated the noise and found McMacken mopping. The robber pointed his gun at McMacken and ordered him to the floor. Turning his attention back to Denisio, the robber told her to open the safe. Denisio only had access to part of the safe, but she emptied it and gave the money to the robber. He then demanded the rest of the money from the other part of the safe. After Denisio said she could not give him that money, the robber stuffed the money Denisio gave him into his pockets, ordered everyone to stay on the floor, and left the restaurant. The robber left with about \$600-700. Denisio stayed on the floor for an estimated two minutes before calling the police.

Denisio described the robber as having dark tan skin, dark brown eyebrows, dark brown to black eyes and wearing tennis shoes, dark pants, a ski mask, and a dark jacket. Denisio also said she saw Manal Pauls in the restaurant on previous occasions and knew he worked at the restaurant in the past. When shown a gun recovered from Manal Pauls’ house, she believed it to be similar in size and shape to the gun used during the armed robbery, but the one recovered from Manal Pauls’ house had an orange tip that Denisio did not recall.

McMacken thought that the gun the robber carried was real; he also believed that the gun recovered from Manal Pauls’ house was similar in shape and size to the one the robber used but the one the robber had did not have an orange tip.

Keillor said she noticed a person approaching her as she took the trash out on the night of the armed robbery. Keillor described the gun as either black and gray or black and silver, and she also identified the robber as Manal Pauls. Manal Pauls was once a Zoup employee with whom Keillor worked, and she had no doubt in her mind that he was the robber.

Witness Julia Allos, an 18-year-old who was 17-years-old on the date of the robbery, gave initial testimony during her preliminary examination, but then changed her testimony at trial, stating that she had lied during the preliminary examination. First, we will state Julia Allos’s initial testimony and then her changed testimony.

Preliminary Examination

Troy police officers arrested Julia Allos on December 21, 2005, on an outstanding traffic warrant from Pontiac, and she first spoke to the Troy police about the armed robbery following her arrest. Julia Allos said she drove her 1997 Land Rover to Zoup around 6:00 p.m. on December 18, 2005. She said that Manal Pauls was with her in the vehicle, and he had her drive to the back of the restaurant, where she parked near a dumpster, and he told her to wait in the vehicle. Manal Pauls returned after being gone for approximately 10 minutes and would not tell her what happened. She drew a diagram of the strip mall for the Troy police officers to show them where she parked her vehicle. The Troy police gave her *Miranda* warnings, which she signed and initialed, and she was then released from custody.

Testimony At Trial

Julia Allos met Manal Pauls while she was in high school, between her junior and senior years, and he was her boyfriend on December 18, 2005, when she drove her 1997 Land Rover to Zoup around 6:00 p.m. At this point, her testimony took a turn: she stated that she lied throughout her preliminary examination. She stated that she parked near Zoup's dumpster to purchase tampons at the nearby Rite Aid. Julia Allos testified that she did not take Manal Pauls to the strip mall with her. She said that she never told the police or the press that she lied because she did not want to involve the newspapers in the investigation, she was fearful of the police, and she was fearful of her father. She ultimately planned to keep the truth to herself until she was on the stand at trial and could expound it. She testified that the detectives forced her to incriminate Manal Pauls, which she did because she felt threatened. In support of this claim, she told the jury that when she was given her *Miranda* warnings she did not understand them. She also stated that she was fearful of her father because he had a history of abusive behavior and he did not approve of her dating a man nine years her senior. Julia Allos said she told the detectives not to notify her father because of his history of physically and verbally abusing her. On the day of Manal Pauls' arraignment, Captain Dane Slater told Julia Allos to come down to the police station because her father was waiting for her. She said she tried to tell the truth at this time to the detectives and her father, but they all threatened her. She also testified that she did not have contact with Manal Pauls while he was in jail.

Julia Allos's mother, Ann Allos, testified that Julia Allos's cellular telephone had calls from Manal Pauls and Manal Pauls' brother, Marvin Pauls, as recent as the day before Julia Allos testified at trial. Ann Allos also produced a notebook with several pages of notes written in Julia Allos's handwriting outlining what appeared to be coaching instructions for testifying. Ann Allos also testified that Julia Allos told Ann Allos that she drove Manal Pauls to Zoup and parked in the back by the dumpster and that Manal Pauls was gone for a few minutes and when he came back he was anxious to leave in a hurry.

Russell Barrows, the K9 officer for Troy, tracked the scene of the armed robbery. He started the track from the back door of Zoup's building and described the track from the door to the dumpster as strong, and his dog lost the track by the dumpster.

Joseph Haddad, a Troy police officer, is a translator for the Army Reserve, and he was part of the team that executed a search warrant at Manal Pauls' house. Officer Haddad sat with the Pauls family while the other officers searched the house; Manal Pauls' mother, father, and brother, Matthew, were present in the house during the search. When a toy gun was recovered in a clothes hamper, Manal Pauls' mother, speaking in Arabic, told Manal Pauls' father to tell the police that the gun was his. Officer Haddad said that when Matthew Pauls was asked about a pair of shoes, Manal Pauls' mother said in Arabic to Matthew Pauls to tell the police the shoes were his and to respond that everything the police asked about were his.

Patrick Flood is a civilian police service aid at the Troy Police Department. While Flood worked at the booking area, the police brought Manal Pauls in to the police station. As part of Flood's responsibilities, he had Manal Pauls remove his shoes and socks. Inside one sock was a small bag of marijuana.

On December 18, 2005, the Troy Police Department contacted Steven Scafone, who is a Royal Oak police officer and Manal Pauls' brother in law. When told the call was about Manal

Pauls, Officer Scafone said, “what has he done now?” The Troy police told Officer Scafone that Manal Pauls was a suspect in an armed robbery, so Officer Scafone told them that he would contact his wife, Geada Scafone, and ask her to contact her brother, Manal Pauls.

Captain Dane Slater has worked at the Troy Police Department for 33 years. Captain Slater assisted in the execution of the search warrant at Manal Pauls’ house and recovered a toy gun buried under clothes in a hamper. When Captain Slater first recovered the gun he thought it was real until he saw it had an orange tip. He said the racking of the gun sounded real until you knew that the gun was plastic. The night of the robbery, Captain Slater ordered surveillance on Manal Pauls and Geada Scafone. Captain Slater testified that on the day of Manal Pauls’ arraignment Geada Scafone told Julia Allos not to talk to anyone and not to go to the police station. Julia Allos did accompany Captain Slater to the police station, where she spoke with her father. Captain Slater testified that Julia Allos’s conduct did not indicate that she feared her father.

On the night of the robbery, Detective Sergeant James Clark and Detective Don Tullock went to Manal Pauls’ house. The Detectives notified Manal Pauls that he had been identified as the person who committed the armed robbery at Zoup, and Manal Pauls said the person who robbed the restaurant was wearing a mask, “wasn’t he?” The Detectives had not given Manal Pauls that information. Manal Pauls denied being at Zoup on the night of the robbery and said his sister, Geada Scafone, could vouch that he was at home all day on December 18, 2005. The Detectives asked Manal Pauls for permission to search his bedroom for anything connected to the crime, but he declined. He told the Detectives he had a girlfriend and was with her on December 18, 2005, but he declined to give them her name or her telephone number.

Detective Clark conducted the first interview of Julia Allos on the night of the robbery, and he later interviewed her at Michigan State University, where she was a student, when she said Manal Pauls’ family was putting pressure on her to lie to the police. Detective Clark received Julia Allos’s cellular telephone from Ann Allos.

Manal Pauls’ notice of alibi was admitted into evidence, in which Human Alwan was listed as potentially offering an alibi for Manal Pauls. Alwan testified that he probably was not with Manal Pauls at 6:00 p.m. on the night of the armed robbery. Alwan noted that he could not leave work early on a Sunday because he was an assistant store manager and it was Christmas season. December 18, 2005, was a Sunday.

Sergeant David Wurtz with the special investigation unit of the Oakland County Sheriff’s Department testified that all calls from the jail are collect calls and all calls are digitally recorded. He obtained copies of records and digital recordings of calls made to three telephone numbers, including those of Julia Allos and Marvin Pauls. A compact disc of the telephone calls made from Manal Pauls’ jail cell to those numbers were played for the jury and, after the trial judge determined the transcription was accurate, the jurors received transcripts of the telephone calls.

Following closing arguments and jury instructions, the jury convicted Manal Pauls as charged. Manal Pauls now appeals as of right, challenging the admission of evidence and the scoring guidelines used by the trial court.

II. Admittance Of Manal Pauls' Notice Of Alibi Into Evidence

A. Standard Of Review

This Court reviews preserved evidentiary issues for abuse of discretion.⁵ A trial court abuses its discretion when it chooses an outcome that is outside the range of reasonable and principled outcomes.⁶

B. Analysis

Manal Pauls argues that when the prosecutor referred to the notice of alibi, he improperly shifted the burden of proof onto Manal Pauls and created the expectation in the jury that Manal Pauls had something to prove at trial. We disagree.

Generally, all relevant evidence is admissible.⁷ Relevant evidence may be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence.”⁸ Evidence is not inadmissible simply because it is prejudicial; all evidence offered by the parties is prejudicial to some extent.⁹ Unfair prejudice exists when there is a tendency that marginally probative evidence will be afforded undue or preemptive weight by the jury.¹⁰ For the notice of alibi to be inadmissible, the probative value of admitting the notice of alibi must be substantially outweighed by the danger of unfair prejudice.¹¹ Generally, “where a defendant effectively withdraws his notice of alibi by failing to present any evidence on the defense, it is improper for the prosecution or the trial judge to comment on the defendant’s original intention to present an alibi.”¹²

The defense relies heavily on the decisions in *People v Dean*,¹³ *People v Shannon*,¹⁴ and *People v Hunter*.¹⁵ In *Dean*, this Court held that the notice of alibi was not inadmissible because the prosecutor was not commenting on the defendant’s failure to produce the witnesses listed on the notice of alibi.¹⁶ In *Shannon*, this Court held that “informing the jury of defendant’s failure

⁵ *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003).

⁶ *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231, on remand 258 Mich App 679 (2003).

⁷ MRE 402; *People v Aldrich*, 246 Mich App 101, 114; 631 NW2d 67 (2001).

⁸ MRE 403; see also *Aldrich*, *supra* at 114.

⁹ *Waknin v Chamberlain*, 467 Mich 329, 334; 653 NW2d 176 (2002).

¹⁰ *Lewis v LeGrow*, 258 Mich App 175, 199; 170 NW2d 675 (2003).

¹¹ *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995).

¹² *People v Holland*, 179 Mich App 184, 190; 445 NW2d 206 (1989).

¹³ *People v Dean*, 103 Mich App 1; 302 NW2d 317 (1981).

¹⁴ *People v Shannon*, 88 Mich App 138; 276 NW2d 546 (1979).

¹⁵ *People v Hunter*, 95 Mich App 734; 291 NW2d 186 (1980).

¹⁶ *Dean*, *supra* at 8.

to produce an alibi witness where he had previously given notice unduly denigrates defendant's case when he later chooses to present no evidence."¹⁷ In *Hunter*, this Court reversed and remanded the case for a new trial because, even though the trial court refused to admit the notice of alibi, the prosecutor continually referred to it.¹⁸

Manal Pauls did not present an alibi defense, and the prosecutor referred to the notice of alibi at trial. However, the facts of this case are different from those in *Shannon* and *Hunter*. In those two cases when the prosecutors referred to the notice of alibi, their actions were prejudicial because they said that the defendants had alibi witnesses but would not call them to testify. However, here, as in *Dean*, the prosecutor did not discuss Manal Pauls' failure to call the alibi witnesses. Moreover, the trial court here admitted the evidence and gave the jury specific instructions that Manal Pauls was innocent and had no burden to prove his innocence. And thereafter, the prosecutor did not mention the notice of alibi.

We conclude that the trial court did not abuse its discretion when it admitted Manal Pauls' notice of alibi and allowed the prosecutor to elicit testimony about the alibi during his case in chief.

III. Improper Admittance Of Preliminary Examination Testimony Into Evidence

A. Standard Of Review

This Court reviews for an abuse of discretion a trial court's evidentiary rulings.¹⁹ A trial court abuses its discretion when it chooses an outcome that is outside the range of reasonable and principled outcomes.²⁰

B. Analysis

Manal Pauls contends that the trial court abused its discretion when it permitted the prosecution to admit into evidence the transcript of Julia Allos's preliminary examination testimony. We disagree.

At the conclusion of Julia Allos's testimony, the prosecutor moved to admit the preliminary examination of Julia Allos as a prior statement of a witness under MRE 801(d)(1), which states that a prior statement of a witness is not hearsay if:

The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing or other proceeding, or in a deposition, or (B) consistent with the

¹⁷ *Shannon, supra* at 143.

¹⁸ See *Hunter, supra* at 738-739.

¹⁹ *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003).

²⁰ *Babcock, supra* at 269.

declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive.

Testimony need not be diametrically different than the prior statement to be inconsistent; a change in position is sufficient.²¹ The prosecution may use preliminary testimony in lieu of testimony at trial as substantive evidence, and it is up to the jury to determine which account is true.²²

We conclude that Julia Allos's preliminary testimony is not hearsay and is admissible as a prior statement of a witness because she was subject to cross-examination concerning her preliminary testimony and her testimony at trial was inconsistent with her preliminary testimony that was given under oath. Here, the prosecutor could use her preliminary testimony in lieu of her testimony at trial as substantive evidence and allow the jury to decide which testimony was true.

We conclude that the circuit court did not abuse its discretion when it permitted the prosecution to admit into evidence the transcript of Julia Allos's preliminary examination testimony.

IV. Improper Admittance of Evidence

A. Standard Of Review

This Court reviews for an abuse of discretion a trial court's evidentiary rulings.²³ A trial court abuses its discretion when it chooses an outcome that is outside the range of reasonable and principled outcomes.²⁴

B. Analysis

Manal Pauls argues that the trial court abused its discretion when it permitted the prosecutor to admit into evidence (1) tapes and transcripts of phone calls Manal Pauls made from jail and (2) photographs of the scene taken a year after the crime was committed. We disagree.

Evidence is relevant if it has any tendency to make the existence of any fact that is at issue more probable than it would be without the evidence.²⁵ Relevant evidence may be excluded if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of

²¹ *People v Chavies*, 234 Mich App 274, 282; 593 NW2d 655 (1999).

²² *People v Marrow*, 214 Mich App 158, 165; 548 NW2d 324 (1995).

²³ *People v Katt*, 468 Mich 278; 662 NW2d 12 (2003).

²⁴ *Babcock*, *supra* at 269.

²⁵ MRE 401; *People v Crawford*, 458 Mich 376, 388; 582 NW2d 785 (1998).

time, or needless presentation of cumulative evidence.”²⁶ Telephone conversations are admissible under the Michigan Rules of Evidence when the recorded telephone conversations satisfy the condition precedent that evidence is sufficient to support a finding that the matter in question is what its proponent claims.²⁷

The trial court heard the telephone conversations and agreed that the transcripts were accurate. The telephone conversations and their transcripts are relevant because they were used to impeach Julia Allos, and the telephone conversations tended to indicate that Julia Allos perjured herself during her trial testimony. The probative value of the telephone conversations outweighed the dangers of admitting them because the central issue was whether or not Manal Pauls committed armed robbery and the telephone conversations tended to indicate that Julia Allos’s preliminary testimony implicating Manal Pauls was her truthful testimony.

The photographs of the crime scene are relevant because they tend to indicate that someone could park near the Rite Aid dumpster and someone at the Zoup dumpster would not see the car parked near the Rite Aid dumpster. Again, the probative value of the photographs outweighed the dangers of admitting them because they were used to impeach Julia Allos and tended to indicate that she was parked at the Rite Aid dumpster and waited for Manal Pauls to emerge from Zoup.

We conclude that the circuit court did not abuse its discretion when it permitted the prosecutor to admit into evidence (1) tapes and transcripts of phone calls Manal Pauls made from jail and (2) photographs of the scene taken a year after the crime was committed.

V. Cumulative Effect Of Errors In II, III, and IV

A. Standard Of Review

The standards of review of the individual substantive claims are stated above, within each issue. De novo review applies to whether an error was harmful,²⁸ as well as to construing constitutional provisions.²⁹

B. Analysis

Because the circuit court did not err in any of the three previously raised issues, we conclude that the cumulative effect of the errors asserted in issues II through IV did not deny Manal Pauls his right to due process of law and a fair trial.

²⁶ MRE 403; *People v Sabin*, 463 Mich 43, 58; 614 NW2d 888, on second remand 242 Mich App 656 (2000).

²⁷ MRE 901(b)(6); *People v Berkey*, 437 Mich 40; 467 NW2d 6 (1991).

²⁸ *People v Dunn*, 446 Mich 409, 417; 521 NW2d 255 (1994).

²⁹ *Wayne Co v Hathcock*, 471 Mich 445, 455; 684 NW2d 765 (2004).

VI. Scoring Offense Variable (OV) 7 At Fifty Points

A. Standard Of Review

“A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score.”³⁰ “Scoring decisions for which there is any evidence in support will be upheld.”³¹ This Court reviews de novo issues of statutory interpretation.³²

B. Analysis

Manal Pauls argues that the trial court abused its discretion in scoring OV 7 at 50 points. We disagree.

During sentencing, defense counsel objected to the OV 7 scoring, stating:

Your Honor, with respect to OV 7, and OV 7 is a rather lengthy and contentious one, aggravated physical abuse, the victim was treated with sadism, torture, excessive brutality, or a conduct designed to substantially increase the fear and anxiety of a victim during the offense. Your Honor, he was scored 50 points. I believe the probation department is assuming or using the fact that he racked the gun when the safe wasn't opened in scoring the points. I do not believe that that was the purpose or the intent of OV 7. I believe he should not be scored 50 points for the racking of the gun during the robbery itself.

The prosecutor then responded, stating:

If the Court will recall Ms. Keilor's testimony, the Defendant ordered her to get down in a puddle of water which she described as garbage water I think. It was water that was strum of trash and had been—it had come out of the garbage can. And then he ordered her to open the safe and when he—when she couldn't do that because she didn't have the combination, he points the gun at her and he racks it. There could be no other explanation for that behavior but that it was designed to increase the fear or apprehension of the victim—

The trial court agreed with the prosecutor and denied defense counsel's objection.

MCL 777.37(1)(a) provides that OV 7 should be scored 50 points if “[a] victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense.” Although OV 7 is entitled, “Aggravated physical abuse; ‘sadism’ defined[,]” this Court has held that actual physical abuse is

³⁰ *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

³¹ *Hornsby*, *supra* at 468, quoting *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996).

³² *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003).

not required to justify assessing 50 points for that variable because, by its terms, the statute includes situations where there was emotional or psychological, but not physical, abuse of the victim.³³

Manal Pauls argues that the trial court erred in scoring 50 points for OV 7 because he did not engage in any conduct that rose to the level of sadism, torture, or excessive brutality. However, the statute also provides for scoring of 50 points when the defendant engaged in conduct that was designed to substantially increase the victim's fear and anxiety during the offense. And, here, just as in *People v Hornsby*,³⁴ the testimony of the victims that Manal Pauls ordered them at gunpoint into the building and onto the ground and then to open up the safe, and that Manal Pauls racked the gun at them, supported the scoring decision. In *Hornsby*, this Court held that the trial court did not err in its sentencing scoring decision in the defendant's conviction for armed robbery because the defendant's actions in cocking a gun and repeatedly threatening the life of a shift supervisor and other employees supported the trial court's finding that the defendant deliberately engaged in conduct designed to substantially increase the fear and anxiety a victim suffers during the offense.³⁵

We conclude that the circuit court did not abuse its discretion in scoring of OV 7 at 50 points where Manal Pauls engaged in conduct designed to substantially increase the fear and anxiety victims suffers during the offense.

VII. Sentencing On Facts Not Found By The Jury

A. Standard Of Review

Generally, this Court reviews de novo constitutional issues.³⁶ However, as Manal Pauls admits, he did not preserve this issue below. Therefore, this Court should review this issue only for plain error that affected Manal Pauls' substantial rights.³⁷ To avoid forfeiture under the plain error rule, a defendant bears the burden to show that: (1) an error occurred, (2) the error was plain, i.e., clear or obvious, (3) and the plain error prejudiced substantial rights, i.e., that the error affected the outcome of the lower court proceedings.³⁸ Further,

once a defendant satisfies these three requirements, an appellate court must exercise its discretion in deciding whether to reverse. "Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent

³³ *People v Mattoon*, 271 Mich App 275, 277-279; 721 NW2d 269 (2006).

³⁴ *Hornsby*, *supra* at 468.

³⁵ *Hornsby*, *supra* at 468-469.

³⁶ *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

³⁷ *People v Carines*, 460 Mich 750, 763-764, 774; 597 NW2d 130 (1999).

³⁸ *Carines*, *supra* at 763.

defendant or when an error “‘seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings” independent of the defendant’s innocence.”’^[39]

B. Analysis

Manal Pauls contends that the trial court violated his Sixth Amendment rights by sentencing him based on facts not found by the jury beyond a reasonable doubt. We disagree.

Citing *Blakely v Washington*, Manal Pauls argues that the trial court erred when it scored several offense variables based on facts not found by a jury.⁴⁰ However, as Manal Pauls acknowledges, the Michigan Supreme Court has held that *Blakely* does not apply to Michigan’s indeterminate sentencing scheme.⁴¹ And this Court is bound by decisions of the Michigan Supreme Court.⁴² Therefore, Manal Pauls’ argument lacks merit.

We conclude that the circuit court did not violate Manal Pauls’ Sixth Amendment rights by sentencing him based on facts not found by the jury beyond a reasonable doubt because the Michigan Supreme Court has held that *Blakely v Washington* does not apply to Michigan’s indeterminate sentencing scheme.

Affirmed.

/s/ William C. Whitbeck
/s/ Peter D. O’Connell
/s/ Donald S. Owens

³⁹ *Carines, supra* at 763, quoting *United States v Olano*, 507 US 725, 736-737; 113 S Ct 1770; 123 L Ed 2d 508 (1993), quoting *United States v Atkinson*, 297 US 157, 160; 56 S Ct 391; 80 L Ed 2d 555 (1936).

⁴⁰ *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004).

⁴¹ *People v McCuller*, 479 Mich 672, 683; 739 NW2d 563 (2007); *People v Harper*, 479 Mich 599, 615; 739 NW2d 523 (2007); *People v Drohan*, 475 Mich 140, 164; 715 NW2d 778 (2006).

⁴² *People v Beasley*, 239 Mich App 548, 556; 609 NW2d 581 (2000).