

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WANDA FAY RATLIFF,

Defendant-Appellant.

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UNPUBLISHED

July 10, 1998

No. 195238

Recorder's Court

LC No. 95-001147

Before: Holbrook, Jr., P.J., and Young, Jr. and J.M. Batzer\*, JJ.

PER CURIAM.

Defendant appeals as of right her convictions by a jury on one count of second-degree murder, MCL 750.317; MSA 28.549, and two counts of assault with intent to murder, MCL 750.83; MSA 28.278. Defendant was sentenced to 60 to 120 years' imprisonment on the second-degree murder conviction, and thirty to fifty years' imprisonment for each of the assault with intent to murder convictions. We affirm.

First, defendant argues that the evidence was insufficient to support her conviction as an aider and abettor of second-degree murder and assault with intent to commit murder because there was no evidence that defendant assisted, incited or encouraged the shooting. We disagree. Viewing the evidence and all reasonable inferences therefrom in the light most favorable to the prosecutor, we conclude that the evidence was sufficient to enable a rational trier of fact to find defendant guilty.

The elements of second-degree murder are (1) a death, (2) caused by an act of the defendant, (3) absent circumstances of justification, excuse, or mitigation, (4) done with an intent to kill, an intent to inflict great bodily harm, or an intent to create a very high risk of death with the knowledge that the act probably will cause death or great bodily harm. *People v Bailey*, 451 Mich 657, 669; 549 NW2d 325 (1996). The elements of assault with intent to commit murder, MCL 750.83; MSA 28.278, are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). The theory in this case was that defendant was guilty of the foregoing crimes as an aider and abettor.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

In Michigan, “one who procures, counsels, aids, or abets in the commission of an offense may be convicted and punished as if he directly committed the offense. *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995). “Aiding or abetting” includes all forms of assistance. *People v Lawton*, 196 Mich App 341, 352; 492 NW2d 810 (1992). “The quantum of aid or advice is immaterial as long as it had the effect of inducing the crime.” *Id.* at 352. In order 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. *Turner*, 213 Mich App at 568. An aider and abettor’s state of mind can be inferred from all the facts and circumstances. *Id.* In *Turner*, this Court noted that factors that may be considered include “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. *Id.* at 569.

In this case, there appears to be no dispute that defendant was not the actual shooter and that Dennis and/or Robert did the shooting. Thus, the only elements remaining to hold defendant liable as an aider and abettor is proof that defendant performed acts or gave encouragement and that she intended the commission of the crime or had knowledge that the principal intended its commission at the time she gave the aid and encouragement. *Turner*, 213 Mich App 568.

The evidence established that defendant’s need for retribution was the force that set the events into motion. Defendant identified Ricky as the perpetrator of the prior evening’s armed robbery. In front of Dennis, and several others, defendant made threats against Ricky, his “babies,” and anyone who attempted to stand in her way of seeking retribution from Ricky. Defendant indicated that she was going to look for Ricky and she initiated the search. Defendant brought a weapon with her as they left to pursue Ricky. Defendant was the one that asked for Ricky when the foursome arrived at a home on Rosemary. One witness testified that when defendant learned that Ricky was not present, she nodded her head and then individuals in the back seat of the car opened fire. From this, a jury could reasonably infer that defendant was giving *the nod* to begin the shooting, i.e., encouraging and inciting the commission of the crime.

With respect to defendant’s intent, this Court has held that the intent of the aider and abettor is satisfied by proof that he knew the principal’s intent when he gave the aid or assistance. *People v McCray*, 210 Mich App 9, 14; 533 NW2d 359 (1995). In this case, defendant knew Dennis’ intent when she incited and encouraged the shooting. Indeed, defendant set the wheels in motion that created Dennis’ intent when she incited him to assist her in seeking retribution. Then, defendant was present when Dennis said to an individual only identified as “Mario:” “Just tell the Loco boys that I know they did it. When we come, we’re coming shooting.” We hold that the prosecutor introduced sufficient evidence that defendant aided and abetted in the commission of the crimes.

Next, defendant argues that the statement she gave to the police was not voluntarily made because she was coerced into giving it by threats from an unidentified police officer that if she did not

give a statement, her children would be taken away. The trial court did not believe that such threats were made, thus, it denied defendant's motion to suppress.

The trial court rejected defendant's version of the events in its entirety as being inherently incredible. We decline to disturb this finding. In *People v Oliver*, 111 Mich App 734, 747; 314 NW2d 740 (1981), the Court stated:

The statement must be one of a free and rational choice to satisfy due process standards. [Citation omitted.] Here, the question of voluntariness largely boiled down to a question of witness credibility. *Walker* hearings are to be reviewed by a standard of whether the lower court's determination was clearly erroneous, particularly where demeanor and credibility are crucial. [Citation omitted.] Here, the trial court possessed a superior opportunity to judge such credibility.

The trial court, in the best position to assess credibility, rejected defendant's version of the events and accepted the officers'. Morell's testimony established that defendant understood her rights and that she thereafter voluntarily gave a statement. The trial court's denial of defendant's motion to suppress was not clearly erroneous.

Finally, defendant takes issue with the sentence imposed by the trial court. First defendant argues that she must be resentenced where the trial court erroneously scored Offense Variable ("OV") 9, Offender's Role. Appellate review of this issue is precluded. Recently, in *People v Mitchell*, 454 Mich 145; 560 NW2d 600 (1997), the Supreme Court considered the scope of appellate review of guidelines calculations. The Court held that there is "no juridical basis for claims of error based on alleged misinterpretation of the guidelines, instructions regarding how the guidelines should be applied, or misapplication of guidelines variables." *Id.* at 176-177. Appellate review will only be available where (1) a factual predicate is wholly unsupported, (2) a factual predicate is materially false, and (3) the sentence is disproportionate. *Id.* at 177. Because defendant's claim of error involves an alleged misinterpretation of the guidelines and/or instructions regarding how the guidelines should be applied and, as will be addressed below, the sentence is proportionate, appellate review is unavailable. *Id.*

Finally, defendant contends that her 60 to 120 year sentence for the second-degree murder conviction, which exceeded the guidelines recommended minimum sentence range of twelve to twenty-five years, or life, was disproportionately severe. We disagree.

Sentencing decisions are subject to review by this Court on an abuse of discretion standard. *People v Milbourn*, 435 Mich 630, 634-635; 461 NW2d 1 (1990). A sentence constitutes an abuse of the trial court's discretion if it violates the principle of proportionality, which requires a sentence to be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *Id.* at 636, 661.

The sentencing guidelines do not convey substantive rights, but are merely a tool to assist the trial court in its exercise of discretion. *People v Potts*, 436 Mich 295, 303; 461 NW2d 647 (1990).

The trial court may exceed the guidelines when to do so would not violate the principle of proportionality. *Milbourn*, 435 Mich at 659-660.

The court's sentencing of defendant embodied two primary considerations: (1) the entirely senseless nature of the crime, i.e., defendant's need to protect a drug enterprise and seek retribution; and (2) the damage that has been done to so many young lives -- Michelle, Leon, Deshawn, defendant's own children, and the young codefendant's who were "misguided" by defendant.

The trial court's imposition of the sentence appropriately reflected its concern for the magnitude of the damage caused by defendant for something so senseless as a drug enterprise. The level of concern is not adequately considered by the sentencing guidelines. A trial court may depart from the guidelines if there are circumstances about the offense or the offender that are not reflected in the guidelines recommendation. *Milbourn*, 435 Mich at 659-660.

We cannot conclude that the trial court abused its discretion or violated the principle of proportionality when it departed from the guidelines and sentenced defendant to a sentence of 60 to 120 years' imprisonment.

Affirmed.

/s/ Donald E. Holbrook, Jr

/s/ Robert P. Young, Jr.

/s/ James M. Batzer