

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHERRAD ONEIL GLOSSON,

Defendant-Appellant.

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UNPUBLISHED

June 12, 2008

No. 276823

Oakland Circuit Court

LC No. 2006-209978-FC

Before: O’Connell, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

After a jury trial, defendant appeals as of right his conviction of armed robbery, MCL 750.529, based on an aiding and abetting theory. The trial court sentenced defendant to six to 20 years in prison. We affirm, and decide this case without oral argument under MCR 7.214(E).

Defendant first contends that the trial court erred by denying his motion for a directed verdict because insufficient evidence established that he aided and abetted the crime. In reviewing a denial of a motion for a directed verdict of acquittal, we view the evidence in the light most favorable to the prosecution to determine if a rational factfinder could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006).

To establish the elements of armed robbery, a prosecutor must show that an actor (1) “in the course of committing a larceny<sup>[1]</sup> of any money or other property that may be the subject of a larceny, used force or violence against any person who was present or assaulted or put the person in fear,” and (2) “in the course of committing the larceny, either possessed a dangerous weapon, possessed an article used or fashioned in a manner to lead any person present to reasonably

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<sup>1</sup> The relevant statutory definition of “in the course of committing a larceny” includes more than the literal meaning of that phrase, because it “includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property.” MCL 750.530(2). In this case, however, the armed robbery involved the direct use of a weapon to commit a larceny.

believe that the article was a dangerous weapon, or represented orally or otherwise that he or she was in possession of a dangerous weapon.” *People v Chambers*, 277 Mich App 1, 7; 742 NW2d 610 (2007).

The victim’s testimony about the principal offender assaulting her and demanding her purse, pulling out a knife after she initially resisted him, and then taking her purse plainly sufficed to establish that an armed robbery occurred. Therefore, we next must consider whether the evidence likewise adequately proved that defendant aided and abetted the armed robbery.

A person who aids or abets an offense may face prosecution and conviction as if the person had directly committed the offense. *People v Robinson*, 475 Mich 1, 5-6; 715 NW2d 44 (2006), quoting MCL 767.39. Aiding and abetting “is not a separate substantive offense,” but rather “is simply a theory of prosecution that permits the imposition of vicarious liability for accomplices.” *Id.* at 6 (internal quotation omitted). The elements of aiding and abetting consist of the following:

(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 that the defendant gave aid and encouragement. [*Id.* (internal quotation omitted).]

However, mere presence, “even with knowledge that an offense is about to be committed or is being committed, is insufficient to show that a person is an aider and abettor.” *People v Wilson*, 196 Mich App 604, 614; 493 NW2d 471 (1992).

As mentioned above, the victim’s testimony adequately established the first element, i.e., that someone committed the charged crime of armed robbery. An Oak Park police detective additionally testified that during a voluntary police interview initiated by defendant, defendant admitted to (1) driving the car that followed the victim for the purpose expressly announced by the principal offender—to allow the principal offender to rob the victim, (2) observing the principal reach into the center console of the car, where defendant knew a knife was kept, and (3) turning the car around and driving the principal away after he returned to the vehicle in possession of the victim’s purse. From this evidence, a reasonable jury could have inferred beyond a reasonable doubt that defendant, with knowledge that the principal intended to commit an armed robbery, engaged in a course of action that assisted the principal’s commission of the crime. Because the victim’s and the detective’s testimony sufficed to support a finding of all three elements of aiding and abetting an armed robbery, we conclude that the trial court properly denied defendant’s motion for a directed verdict.

Defendant also advances multiple, groundless arguments attacking his sentence. First, defendant asserts that the trial court failed to explain how the minimum and maximum sentences it imposed qualified as proportionate, citing only *People v Lemons*, 454 Mich 234; 562 NW2d 447 (1997). The *Lemons* case reviews the proportionality of a sentence imposed under the former judicial sentencing guidelines, *id.* at 255-260, which plainly do not apply in this case. MCL 769.34(1). Defendant thus has not established error in this regard.

Defendant next argues that the trial court failed to properly credit his expression of remorse as an acceptance of responsibility, and bases this argument on a provision of the federal sentencing guidelines. The federal guidelines plainly have no applicability to the present conviction of a state crime in a state court, or to the resultant state sentence imposed pursuant to mandatory state sentencing statutes. Accordingly, this claim of error likewise lacks merit.

Defendant suggests that the trial court abused its discretion by failing to depart downward from the sentencing guidelines in light of his history of substance abuse. According to MCL 769.34(10), “If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant’s sentence.” The mandatory statutory sentencing provisions never *require* a trial court to depart from the guidelines.

Defendant complains that the trial court should have conducted an assessment of his rehabilitative potential through intensive alcohol, drug, and psychiatric treatment, as he claims MCR 6.425(A)(5) requires. But MCR 6.425(A)(5), which actually applies to the probation officer’s preparation of a presentence information report (PSIR), at most requires inclusion of “the defendant’s medical history, substance abuse history, if any, and, if indicated, a current psychological or psychiatric report.” The clear and unambiguous language of MCR 6.425(A)(5) simply does not require an assessment of rehabilitative potential through the types of treatment specified by defendant.

Defendant additionally maintains that his sentence amounted to unconstitutional cruel and/or unusual punishment in violation of the federal and state constitutions. We reject defendant’s contention because (1) at the sentencing hearing, defendant offered no objection to the PSIR, (2) the PSIR ultimately calculated that defendant should receive a minimum sentence term within a range between 51 and 85 months for his armed robbery conviction, (3) the trial court reviewed on the record various relevant and permissible factors and then imposed the six- to 20-year term of imprisonment, which fell well within the mandatory sentencing guidelines, and (4) “a sentence within the guidelines range is presumptively proportionate, and a sentence that is presumptively proportionate is not cruel or unusual punishment.” *People v Powell*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (Docket No. 275846, issued March 27, 2008), slip op at 3.

Finally, defendant argues that the trial court’s scoring of sentencing guidelines variables violated *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). However, our Supreme Court recently has reaffirmed that a sentencing court does not violate *Blakely* by engaging in judicial factfinding to score the offense variables of Michigan’s sentencing guidelines. *People v McCuller*, 479 Mich 672, 676-677; 739 NW2d 563 (2007).

Affirmed.

/s/ Peter D. O’Connell  
/s/ Stephen L. Borrello  
/s/ Elizabeth L. Gleicher