

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
January 21, 2014

v

MEGAEL T.J. CLEMONS,
Defendant-Appellant.

No. 312474
Oakland Circuit Court
LC No. 2011-239290-FC

Before: SERVITTO, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529, and first-degree home invasion, MCL 750.110a(2). He was sentenced to 285 to 480 months' imprisonment for the armed robbery conviction, and 140 to 240 months' imprisonment for the first-degree home invasion conviction. He appeals as of right. We affirm.

Defendant first contends that there was insufficient evidence upon which to convict him of armed robbery and first-degree home invasion. Specifically, defendant argues that there is insufficient evidence to prove that his text messages to John Johnson indicated there was money in the house of Emmanuel Smith. Further, defendant argues that the failure of the police to investigate Brandon Kennedy in the crimes casts doubt on defendant's convictions.

In a challenge to a criminal conviction based on insufficient evidence, this Court reviews the record de novo. *People v Mitchell*, 301 Mich App 282, 290; 835 NW2d 615 (2013). This Court analyzes whether the evidence, viewed in the light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt. *Id.* at 290-291.

Armed robbery occurs when a person uses force or violence to commit a larceny of any money or other property and “in the course of engaging in that conduct, possesses a dangerous weapon” *People v Williams*, 491 Mich 164, 171; 814 NW2d 270 (2012), quoting MCL 750.529. “[A] person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony . . . is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling . . . [a]nother person is lawfully present in the dwelling.” *People v Baker*, 288 Mich App 378, 382; 792 NW2d 420 (2010), quoting MCL 750.110a(2).

A defendant may be convicted on an “aiding and abetting theory.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). To support a finding that a defendant aided and abetted a crime, it must be shown 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 or encouragement.” *Id.* at 757 (quotation marks and citation omitted). “An aider and abettor’s state of mind may be inferred from all the facts and circumstances.” *Id.* at 758 (quotation marks and citation omitted). “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.* (quotation marks and citation omitted).

The evidence presented at trial, viewed in the light most favorable to the prosecution, proved beyond a reasonable doubt that defendant aided and abetted Johnson in Johnson’s first-degree home invasion and armed robbery of Emmanuel. The text messages between defendant and Johnson show a clear plan, as a part of which defendant informed Johnson of Emmanuel’s movements, encouraged Johnson to commit the crimes, and left the back door open so that Johnson could easily enter the house. On October 1, 2011, Johnson texted defendant, “You should set it up to where I can get in da house and lay em down.” Defendant agreed, stating, “Okay. I think I can do dat.” This exchange demonstrated Johnson’s idea to enter Emmanuel’s house, where defendant was residing, and defendant’s offer to assist Johnson. Further, defendant actually stated to Johnson, “Hell yeah tell that nigga you want all the money or dey dead.”¹ This indicates defendant’s clear knowledge that Johnson was planning to rob Emmanuel, and the message was further encouragement to Johnson to commit the robbery and home invasion. Also, on the evening of October 1, 2011, Johnson sent a message to defendant stating, “I need y ta be ready mane, because Ima catch the bus over there.” Defendant responded, “Ok I got you.” Clearly, the agreement and plan between defendant and Johnson was thought out the evening before the crimes.

On the morning of October 2, 2011, the communication between defendant and Johnson further demonstrates the plan between the two to commit the crimes. Before leaving the house, defendant informed Johnson of Emmanuel’s movements and activities within the house, and it was mentioned between the two that Johnson should enter the house via the back door. Defendant left the house via the back door, apparently leaving it unlocked, as Johnson was able to enter 15 to 20 minutes later through the back door. When Johnson was in the home, he exhibited knowledge that Emmanuel had once owned a gas station, information that was likely conveyed by defendant as Emmanuel’s foster son. Considering the substance of the text messages between defendant and Johnson, the dozens of phone calls made between defendant and Johnson in the days and hours preceding the crimes, and defendant’s actions in uncharacteristically getting out of bed early and leaving for church alone just minutes before

¹ Hence, defendant’s argument that only Johnson made note of taking money is without merit.

Johnson entered the home, it was proven beyond a reasonable doubt that defendant aided and abetted Johnson in the commission of the crimes.²

Defendant argues that his Fifth and Fourteenth Amendment due process rights were violated, because the evidence was insufficient to convict him. However, for the reasons just stated, there was sufficient evidence upon which to convict defendant of first-degree home invasion and armed robbery.

Defendant next argues that the sentences imposed constituted cruel and unusual punishment under the United States and Michigan Constitutions. Specifically, defendant contends that because of his relatively young age and difficult upbringing, the sentences issued by the trial court were disproportionate to the crimes committed, and thus, cruel and/or unusual punishment.

Unpreserved claims of error are reviewed for plain error. *Carines*, 460 Mich at 764. To avoid forfeiture under the plain error rule, defendant must demonstrate that: (1) error occurred, (2) the error was plain, meaning clear or obvious, and (3) the plain error affected defendant's substantial rights. *Id.* at 763. The third requirement "requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *Id.* The defendant bears the burden of persuasion regarding prejudice. *Id.* If the defendant demonstrates all three requirements, this Court must exercise discretion in deciding whether to reverse, and should do so only when the plain error "resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id.* at 763-764 (quotation marks and citation omitted).

The United States Constitution provides that cruel and unusual punishment "shall not be inflicted," and the Michigan Constitution prohibits "cruel or unusual punishment." US Const, Am VIII; Const 1963, art 1, § 16. "In deciding if punishment is cruel or unusual, this Court looks to the gravity of the offense and the harshness of the penalty, comparing the punishment to the penalty imposed for other crimes in this state, as well as the penalty imposed for the same crime in other states." *People v Bowling*, 299 Mich App 552, 557-558; 830 NW2d 800 (2013), quoting *People v Brown*, 294 Mich App 377, 390; 811 NW2d 531 (2011). However, "a sentence within the guidelines range is presumptively proportionate[.]" *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008). "In order to overcome the presumption that the sentence is proportionate, a defendant must present unusual circumstances that would render the presumptively proportionate sentence disproportionate." *Bowling*, 299 Mich App at 558 (quotation marks and citation omitted).

² Defendant notes that Brandon Kennedy was never investigated for the crimes, but this fact is irrelevant. Brandon texted defendant, "don't come back," after Johnson had entered the home, used Emmanuel's car without permission, and abandoned it in Detroit while Emmanuel was recovering from his injuries. However, there are no facts to connect Brandon to either defendant or Johnson in the context of the home invasion and armed robbery.

Defendant's sentencing guidelines range for the armed robbery conviction was 171 to 285 months, and 84 to 140 months for the first-degree home invasion conviction. Defendant was sentenced to 285 to 480 months' imprisonment for the armed robbery conviction and 140 to 240 months' imprisonment for the first-degree home invasion conviction. The 285 month minimum sentence falls within the guidelines range for the armed robbery conviction and the 140 month minimum sentence for the first-degree home invasion conviction falls within the guidelines range for that offense; accordingly, there is a presumption that the sentence imposed is proportionate and constitutional. *Powell*, 278 Mich App at 323. A proportionate sentence is not cruel or unusual punishment. *Id.* As noted by the court at sentencing, though the sentences here are at the top of the sentencing guidelines, the circumstances of defendant's crimes are particularly heinous. Defendant lived in Emmanuel's home as a foster child, and used that position to encourage and assist Johnson to enter the home and rob Emmanuel. Johnson entered while small children were present in the home, and Emmanuel is permanently in pain and disability as a result of the shot to his neck.

Defendant argues that because he is only 18 years old, came from a difficult and dysfunctional childhood, and spent most of his life in foster care, the sentences are disproportionate to the circumstances and constitute cruel and unusual punishment. However, defendant fails to demonstrate why his age and background are unusual circumstances that mandate he be sentenced to some term less than the high end of the sentencing guidelines. Defendant's background and family history were included in the presentence report considered by the court prior to sentencing, and the court considered that information when the sentences were imposed.³

Affirmed.

/s/ Deborah A. Servitto
/s/ Christopher M. Murray
/s/ Mark T. Boonstra

³ Defendant also argues that the sentences imposed are similar to the life sentence imposed in *Solem v Helm*, 463 US 277; 103 S Ct 3001; 77 L Ed 2d 637 (1983). Defendant's comparison of the facts in *Solem* to the facts here is misguided, as defendant encouraged and assisted Johnson in entering Emmanuel's home, and robbing him, resulting in Emmanuel being shot in front of his small children. Defendant's actions are much more serious than the "relatively minor criminal conduct" of uttering a no account check in *Solem*. *Id.* at 280-281, 303.