

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
March 25, 2014

v

SOPHIA KAYE PAPPAS,

Defendant-Appellant.

No. 313751
Wayne Circuit Court
LC No. 12-005046-FC

Before: BECKERING, P.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Defendant, Sophia Kaye Pappas, was convicted following a bench trial of arson of a dwelling house, MCL 750.72, conspiracy to commit arson of a dwelling house, MCL 750.157a; MCL 750.72, sending explosives with intent to injure, MCL 750.204, and assault with intent to do great bodily harm less than murder, MCL 750.84. The trial court sentenced defendant to 9 to 20 years' imprisonment for the arson, conspiracy to commit arson, and sending explosives with intent to injure convictions, and five to ten years' imprisonment for the assault with intent to do great bodily harm less than murder conviction. Defendant appeals as of right, and we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

The prosecution presented evidence to establish that defendant, upset about the failure of her romantic relationship with Angela Passini as well as the impact it might have on her efforts to adopt two children, sought to exact harm upon Alana Faulk, a person whom Passini had begun dating. In seeking to exact this harm, defendant retained the assistance of Evelyen Lewek and Alvin Echols. According to Lewek, who describes herself as being known for hurting people, defendant asked her and Echols to "cut [Faulk's] throat" or "beat her until she stops breathing."¹

¹ Lewek testified that initially, defendant wanted her and Echols to kill a man with whom Passini may have been involved, and the three of them staked out a hotel by the airport for a few days in an effort to locate the man. Defendant then changed her plans, and Lewek understood that defendant wished to harm a woman named April, who had been communicating with Passini. The three of them attempted to locate April a couple of times at an apartment complex in Westland. Unsuccessful yet again, defendant turned her attention to Faulk.

Lewek claimed that Echols and defendant agreed to a price of \$2,000 for the killing. For approximately two days leading up to April 24, 2012, the group followed Faulk to and from her place of work at a bar in Inkster, Michigan, and familiarized themselves with Stanmoor Street in Livonia, where Faulk lived. Lewek testified that the group would “sit for hours out at night circling the house and just watching the neighborhood.” Scott Gatscher, Faulk’s neighbor who lived directly across Stanmoor Street, testified that on April 23, 2012, he saw a dark minivan or SUV driving slowly down the street without its lights on, parking intermittently.

Lewek testified that Echols came up with an idea to firebomb Faulk’s house. On the night of April 24, 2012, defendant was driving the group in her Trailblazer, pulled into a gas station, and filled a small gas can with gasoline. The group also purchased a bottle of motor oil and three glass bottles of juice. Security camera footage from the gas station shows defendant and Lewek walking into the store and purchasing the items. Defendant drove the Trailblazer to Faulk’s home, and the group saw that lights were illuminated in Faulk’s bedroom, indicating that Faulk was in the house. Defendant drove several blocks away to a dark area, and Echols constructed three Molotov cocktails with the items purchased at the gas station. While Echols made the explosive devices, defendant and Lewek went to a local K-Mart and purchased handkerchiefs, which Echols used as fuses for the Molotov cocktails. When the explosives were completed, defendant drove the group back to Faulk’s home and made sure the lights were still on in Faulk’s bedroom. Defendant dropped off Echols in front of Faulk’s house and drove the Trailblazer down the street a short distance to wait for Echols to return.

Faulk testified that on the night of April 24, 2012, she was lying in bed reading a book when she heard two loud bangs outside her window, with approximately ten seconds between the bangs. Faulk jumped out of bed, looked out the window, and saw a “wall of fire” burning the outside the house. Faulk ran out of the room. Gatscher observed the flames from his front window and stated that he could see a bush in front of the house and the area behind the bush burning. Gatscher picked up his cellular telephone to call 911 and walked outside to assist Faulk. As Gatscher was walking out of his house, he noticed a figure walking toward a dark minivan or SUV parked down the street from Faulk’s house. The figure got into the vehicle and the vehicle sped down the street. By the time Gatscher got to Faulk’s front door, Faulk was outside the house and the fire had largely dissipated. Within five to ten minutes of the fire starting, police officers arrived on the scene.

Officer Eric Eisenbeis, a police officer with the city of Livonia, was the first officer to arrive on the scene. Eisenbeis observed a charred, broken glass bottle, an intact glass bottle filled with liquid, and a red rag hanging from a tree outside the bedroom window. Eisenbeis also observed that the outside of the bedroom window was charred and a pillar attached to the house appeared to be charred. Eisenbeis spoke with Gatscher, who relayed the information about the dark minivan or SUV that fled the scene of the fire. Officer James Green, a police officer with the city of Livonia, was alerted to look out for a dark minivan or SUV, and he located a burgundy Trailblazer traveling south on Inkster Road. Green conducted a traffic stop, and when he approached the vehicle, he could immediately smell gasoline. Defendant was the driver of the vehicle, Lewek was seated in the front passenger seat, and Echols was sitting in the back seat. Green observed a gas can sitting on the floor of the back seat and white latex gloves on the seat next to Echols. Defendant told Green that she had picked up the two passengers at a friend’s house and was taking them back to her house to babysit in the morning. Green detained the

occupants of the vehicle and radioed the stop to Eisenbeis. When it was determined that Faulk was familiar with defendant, defendant was arrested.

After the arrest, police were able to obtain text and Facebook message records for defendant and found that defendant engaged in various conversations in March and April 2012 in which she attempted to determine the identity of Faulk as well as other persons who may have been involved in relationships with Passini. During questioning by police after her arrest, defendant made conflicting statements concerning the gas can and how she knew Lewek and Echols.

Defendant was charged with assault with intent to murder, MCL 750.83, conspiracy to commit first-degree murder, MCL 750.316; MCL 750.157a, arson of a dwelling house, conspiracy to commit arson of a dwelling house, and sending explosives with intent to injure persons. Following a bench trial, the trial court found defendant guilty of assault with intent to do great bodily harm less than murder, which is a lesser included offense of assault with intent to murder. The trial court found that Lewek's testimony was largely incredible and that the prosecution failed to prove defendant's intent to murder Faulk beyond a reasonable doubt. The court also found defendant not guilty of conspiracy to commit first-degree murder. However, the court found her guilty of each of the remaining charges in light of the corroborating evidence.

II. SUFFICIENCY OF THE EVIDENCE

Defendant first contends that insufficient evidence existed to convict her of arson of a dwelling house. Specifically, she argues that arson of a dwelling house requires that the structure be burned, and Faulk's home was not sufficiently damaged for purposes of arson of a dwelling house. We disagree.

In a challenge to a criminal conviction based on insufficient evidence, this Court reviews the record de novo. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). This Court analyzes whether the evidence, viewed in a light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crime charged were proven beyond a reasonable doubt. *Id.* at 196.

Defendant was convicted under an aiding and abetting theory. There are three elements necessary to sustain a conviction under an aiding and abetting theory. *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010).

(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.* (quotation omitted).]

Defendant's arson conviction was pursuant to MCL 750.72,² which at the time of trial, provided that:

Any person who willfully or maliciously burns any dwelling house, either occupied or unoccupied, or the contents thereof, whether owned by himself or another, or any building within the cartilage of such dwelling house, or the contents thereof, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 20 years.

Our Supreme Court has held that only minimal damage is necessary to find that a defendant burned a dwelling house. *People v Losinger*, 331 Mich 490, 502-503; 50 NW2d 137 (1951). Indeed, a fire that only "slightly damaged the building" was sufficient to find that the building was burned for purposes of the arson statute. *Id.*

In raising her sufficiency claim, defendant does not argue whether the evidence presented was sufficient to sustain an aiding or abetting theory, whether the building at issue was a dwelling, or whether she entertained the requisite intent. She only challenges whether there was sufficient evidence to demonstrate that Faulk's home burned. This argument is meritless because there was sufficient evidence for a reasonable finder of fact to conclude that Faulk's home was burned to the extent necessary to support defendant's conviction. Although there was no major damage to the structure of Faulk's house, Officer Eric Eisenbeis observed that the outside wall of the house near Faulk's bedroom was charred by the fire and that a pillar attached to the house was also charred. Investigator Daniel Lee, an employee with the city of Livonia, also inspected the house after the fire and observed a charred scorch mark above the shutters next to Faulk's bedroom window.³ Lee also noticed that a pillar, attached to a patio on the front of the house, had some charring.⁴ While the fire did not threaten the structural integrity of the house, it is clear that the house suffered scorch marks and charring. Viewed in a light most favorable to the prosecution, this is sufficient to meet the minimum threshold set forth in *Losinger*, 331 Mich at 502-503.

III. OFFENSE VARIABLE (OV) 19

Defendant next argues that she is entitled to resentencing because the trial court erred by scoring OV 19 at ten points. Specifically, defendant contends that the trial court should have

² MCL 750.72 was amended, effective April 3, 2013, by 2012 PA 531. Defendant was tried and convicted under the previous version of the statute.

³ Faulk testified that there was blackened soot on the side of the house around her bedroom window, the shutter had a "big dent in it," and the window screen was "dented and bent, kind of coming out of the window." Had Echols launched a better, stronger shot, the outcome may well have been dramatically different.

⁴ The trial court did not find that the damage above the shutter amounted to charring as defined by Michigan law, but did find that the damage to the pillar was sufficient to meet the statutory definition.

scored zero points for OV 19 because she did not interfere with the administration of justice when she instructed her daughter and mother to make fraudulent telephone calls to law enforcement officials regarding Faulk. We disagree.

“Under the sentencing guidelines, the circuit court’s factual determinations are reviewed for clear error and must be supported by a preponderance of the evidence.” *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013). This Court reviews de novo whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute. *Id.*

OV 19 is the offense variable relating to interference with the administration of justice or the rendering of emergency services. MCL 777.49; *People v Barbee*, 470 Mich 283, 286-288; 681 NW2d 348 (2004). MCL 777.49(c) directs the trial court to score ten points if “[t]he offender otherwise interfered with or attempted to interfere with the administration of justice[.]” The “administration of justice,” for purposes of OV 19, can mean the judicial process or law enforcement activities, and the phrase is construed broadly. *Barbee*, 470 Mich at 287-288. Providing a false name to police officers can constitute interference with the administration of justice. *Id.* at 288. A defendant telling victims of a crime not to disclose the defendant’s acts also constitutes interference with the administration of justice because it may “diminish . . . victims’ willingness and ability to obtain justice.” *People v Steele*, 283 Mich App 472, 493; 769 NW2d 256 (2009). Additionally, a kidnapper who required the victim to promise not to contact the police as a condition of release was properly assessed ten points for OV 19. *People v McDonald*, 293 Mich App 292, 300; 811 NW2d 507 (2011).

After defendant’s arrest, but before her preliminary examination, she placed several telephone calls between May 14, 2012, and May 20, 2012 to her mother and her minor daughter that were recorded as part of jail protocol. During those calls, defendant instructed her mother and daughter to place calls to law enforcement officials regarding a dinner cruise that Faulk was planning in Detroit as part of her business. Specifically, defendant wanted her mother and daughter to call the United States Coast Guard and place a tip that the cruise would involve underage girls drinking and consuming illegal drugs. At the sentencing hearing, the court concluded that these calls by defendant were an attempt to “discourage [Faulk] or at least put her in a position where she might feel less willing or enthusiastic about the case,” and that “it was an attempt to try to put a stick in the spokes of Ms. Faulk going forward with this particular case.”

Defendant’s conduct was a clear attempt to interfere with law enforcement activities and the judicial process relating to her case. Defendant’s instructions for her mother and daughter to place fraudulent calls to the Coast Guard regarding Faulk’s cruise amounted to an attempt to place Faulk in legal trouble under false pretenses, and were also an attempt to discourage Faulk from participating in the case against defendant. They were also an attempt to diminish Faulk’s willingness and ability to participate in this case by placing her in legal trouble and distracting her from this case. We conclude that the trial court properly scored OV 19 at ten points. See *Steele*, 283 Mich App at 493 (holding that a defendant’s act intended to diminish a victim’s willingness and ability to obtain justice qualified as interference with the administration of justice under OV 19).

IV. GUIDELINES DEPARTURE

Defendant next argues that the trial court erred when it departed from the sentencing guidelines range. Specifically, defendant contends that the factors cited by the court to justify a guidelines departure were already taken into account by OV 4 (psychological injury to a victim) and OV 14 (the offender was a leader in a multiple offender situation). Defendant argues that substantial and compelling reasons to depart from the sentencing guidelines did not exist in this case. We disagree.

Where a sentence departs from the guidelines range, the existence of a particular sentencing factor is a factual determination reviewed for clear error. *People v Smith*, 482 Mich 292, 300; 754 NW2d 284 (2008). Clear error exists when the Court is left with a definite and firm conviction that an error took place. *People v Fawaz*, 299 Mich App 55, 60; 829 NW2d 259 (2012). The determination that a sentencing factor is objective and verifiable is reviewed de novo. *People v Anderson*, 298 Mich App 178, 184; 825 NW2d 678 (2012). The court's determination that the sentencing factors constituted substantial and compelling reasons for departure from the guidelines is reviewed for an abuse of discretion. *Smith*, 482 Mich at 300. An abuse of discretion is present when the sentence assessed is not within the range of principled outcomes. *Id.* Throughout the inquiry, this Court must defer to the trial court's firsthand knowledge of the facts and the defendant. *People v Babcock*, 469 Mich 247, 270; 666 NW2d 231 (2003).

"It is well established that a court may depart from the appropriate sentence range . . . if the court has a substantial and compelling reason for that departure and states on the record the reasons for departure." *Anderson*, 298 Mich App at 183, quoting MCL 769.34(3). In order to be substantial and compelling, the reasons upon which the trial court relied must be objective and verifiable. *Smith*, 482 Mich at 299. The reasons for departure must "be of considerable worth in determining the length of the sentence and should keenly or irresistibly grab the court's attention." *Id.* The trial court may not base a departure from the guidelines on an "offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range unless the court finds from the facts . . . that the characteristic has been given inadequate or disproportionate weight." *Id.* at 300, quoting MCL 769.34(3)(b). Additionally, the trial court must justify, on the record, both the departure from the guidelines and the extent of the departure. *Id.* at 313. Departure should only occur in the most exceptional cases. *Babcock*, 469 Mich at 257.

The trial court articulated two primary reasons for the upward departure from the sentencing guidelines range: the severe psychological impact on Faulk and the leadership role defendant assumed in these crimes. The trial court acknowledged that both of these factors were considered in determining defendant's guidelines range by the scoring of OV 4 and OV 14, respectively, but nevertheless determined that the factors were given inadequate weight.

OV 4 concerns psychological injury to a victim. MCL 777.34. Defendant was assessed ten points for OV 4 because Faulk suffered "serious psychological injury requiring professional treatment." MCL 777.34. The court found that the psychological injury inflicted upon Faulk was not adequately addressed by the sentencing guidelines because of "the impact that this has had on Ms. Faulk in terms of her having to leave her residence and relocate, being afraid to be

out at night and afraid of who is going to knock on the door and who is going to drive by.” In a victim’s impact statement, Faulk indicated in part:

[T]he incidents which occurred that night have changed my life forever, and had luck not been on my side that night, it may have ended it. I was laying [sic] directly underneath the window that the firebomb hit. Had it gone through the glass, my entire bed would have been engulfed in flames and I probably would have died or been burned and disfigured for life. Luck was on my side however, and it bounced off the shutter and ignited the bushes instead. If it had gone through, I could not have gotten away quick enough, since I have severe arthritis in both knees and I move slowly. . . .

. . . I am afraid to get out of my car at night. I am afraid to leave my home at night. I am suspect to [sic] anyone walking past my house or knocking on my door. I was so paranoid, that I was forced to spend over 5 thousand dollars to move from a home which I loved. I also lost my security deposit from my original home. I moved far away from my Livonia home and now I drive an excessive amount of miles to get to my job, school, and friends. I have sequestered myself away from the world and live a very lonely life.

. . . the paranoia, and fear of the night that I feel right now is probably going to be a life sentence. Mine.”

Although OV 4 takes into account a victim’s psychological injuries resulting from a crime, it does not “always account for the unique psychological injuries suffered by individual victims[.]” *Anderson*, 298 Mich App at 189. Here, OV 4 fails to adequately consider the unique harm suffered by Faulk. Faulk was stalked in her own home, and was fortunate to survive a potentially fatal attack in the dead of night as she lay in her own bedroom, reading. After this attack, she moved to a new home, fears the night, and became “paranoid.” Under the circumstances of this case, the trial court did not abuse its discretion in finding that this was a substantial and compelling reason to depart from the sentencing guidelines. See *Smith*, 482 Mich at 300.

Likewise, we find that the trial court did not abuse its discretion when it found that defendant’s leadership role, although considered by OV 14, was a substantial and compelling reason to depart because it was not given adequate weight by the guidelines. OV 14 concerns an offender’s role in a crime. MCL 777.44. Defendant was assessed ten points for OV 14 because she “was a leader in a multiple offender situation.” MCL 777.44. The trial court found that defendant’s leadership role in these offenses was not adequately considered by OV 14. The court described defendant’s “recruiting” of Lewek and Echols, who were enlisted solely to do her bidding. Unlike a spur of the moment criminal offense or other incident in which her judgment was clouded and she “temporarily lost it,” defendant was “determined” and “very

purposeful in what she did.” She was the “driving engine” who was “pressing the issue” and “pushing this agenda.” She was the “one person along this whole continuum who could have called it off.”⁵ Instead, at her behest defendant and her cohorts turned to Faulk, her third target, and monitored Faulk’s comings and goings for approximately two days. Defendant drove the group to survey Faulk’s neighborhood and to purchase supplies to build the Molotov cocktails. Thereafter, defendant orchestrated the firebombing of Faulk’s home. In short, defendant carefully plotted her attack in a measured, deliberate, and drawn out fashion, enlisting cohorts whose sole involvement was to serve as her executors of crime. Under the circumstances of this case, the trial court did not abuse its discretion in finding that this was a substantial and compelling reason to depart from the sentencing guidelines. See *Smith*, 482 Mich at 300.⁶

Affirmed.

/s/ Jane M. Beckering
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan

⁵ As noted in footnote one, Lewek testified regarding defendant’s targeting of two other potential victims before focusing her attention on Faulk, with each episode entailing attempts to scout out the victim for purposes of a planned attack. When rendering its verdict, the trial court noted defendant’s misguided thought and expectation that by intervening and trying to “disrupt and end” Passini’s relationships with others, it would somehow drive Passini back to her.

⁶ In reaching this conclusion, we note that the trial court, as part of its finding that OV 14 did not adequately account for defendant’s conduct in this case, reasoned that defendant’s sentence should be the same as that of Echols, who, because of his prior record, received a nine-year-minimum sentence. This was error because a comparison to a codefendant’s sentence cannot be a substantial and compelling reason for departure. *People v Pearson*, 185 Mich App 773, 779; 462 NW2d 839 (1990); *People v Clark*, 185 Mich App 127, 131; 460 NW2d 246 (1990). Nonetheless, we affirm because we are satisfied that the trial court would have departed to the same extent regardless of this invalid factor. See *Babcock*, 469 Mich at 260.