

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL JORDEN,

Defendant-Appellant.

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UNPUBLISHED

May 21, 2002

No. 232246

Wayne Circuit Court

LC No. 00-004389

Before: Smolenski, P.J., and Neff and White, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of carjacking, MCL 750.529a, and armed robbery, MCL 750.529, for which he was sentenced to concurrent terms of seven to twenty years' imprisonment. We affirm.

Defendant first argues that insufficient evidence was presented to support his convictions. This Court reviews de novo a defendant's challenge to the sufficiency of evidence. A valid conviction requires that sufficient evidence be produced to justify the trier of fact in concluding that each element of the crime charged was proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Any conflicts in the evidence must be resolved in favor of the prosecution. *Id.* This Court reviews a trial court's findings of fact for clear error. MCR 2.517(A)(1); *People v Ramsey*, 89 Mich App 468, 476; 280 NW2d 565 (1979).

A trial court sitting without a jury must make findings of fact from which this Court can determine whether the trial court correctly applied the law to the facts. MCR 2.517(A)(1); *People v Feldmann*, 181 Mich App 523, 533-534; 449 NW2d 692 (1989). Circumstantial evidence and all reasonable inferences arising from it may provide the proof necessary to satisfy the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

A carjacking conviction requires proof beyond a reasonable doubt (1) that the defendant took a car from another person in the presence of another person, and (2) that the defendant put the other person in fear, or the defendant used, or threatened to use, force or violence to effect the taking. MCL 750.529a; *People v Davenport*, 230 Mich App 577, 579; 583 NW2d 919 (1998). The elements of armed robbery are 1) an assault, 2) a felonious taking of property from the victim's person or presence, and 3) the defendant being armed with a dangerous weapon or

article used or fashioned as a dangerous weapon. *People v Norris*, 236 Mich App 411, 414; 600 NW2d 658 (1999).

Defendant argues that it was clear that he was not the gunman, and that the proofs did not show a credible basis for concluding that he participated in the crimes. Rather, he asserts, he was merely present, and the victims assumed that he was involved with the co-defendant because he had taken them to the location where the carjacking occurred. We find no error with the trial court's factual findings and application of law. There was evidence from which the court could fairly conclude that defendant acted in concert with co-defendant. There was testimony that defendant asked the victims to drive to the location where the carjacking occurred, that he announced "You'all getting jacked," and that he left the scene with co-defendant in the carjacked car. There was also testimony that he was with co-defendant shortly before the carjacking, when co-defendant made reference to a carjacking, and also the next day when they were both arrested. On this record, the trial court was not obliged to conclude that defendant was merely present. Further, there was testimony that while co-defendant was assaulting the victims with a gun, defendant grabbed a victim's chain from his neck. Thus, there was sufficient evidence to support both convictions.

Defendant next argues that his sentencing guidelines were calculated based on inaccurate information. Absent an error in scoring or the sentencing court's reliance on inaccurate information, this Court must affirm a defendant's sentence when it falls within the guidelines' range. *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000). A trial court may determine scores for offense variables when evidence adequately supporting the scores appears in the record. *People v Babcock*, 244 Mich App 64, 73; 624 NW2d 479 (2000).

MCL 777.31 establishes the procedure for scoring OV 1. OV 1 assesses points for the aggravated use of a weapon during the commission of a crime. MCL 777.31(1). The total points are determined by assessing which situation applicable to the circumstances of the crime results in the highest number of points. *Id.* Defendant was assessed twenty-five points for OV 1 – the highest number of points possible – based on the evidence showing that co-defendant discharged a firearm toward an occupied vehicle. MCL 777.31(1)(a). Notwithstanding the failure of any proof that defendant himself ever possessed the gun during the incident, the statute requires that all participants involved in the commission of an offense be assessed the same number of points for OV 1, if any one participant is assessed points. MCL 777.31(2)(b).

At co-defendant's sentencing, the trial court specifically noted the credible evidence establishing that during the incident, co-defendant fired a gun at a car occupied by the three victims. Thus, an OV 1 score of twenty-five was adequately supported by the record.

Affirmed.

/s/ Michael R. Smolenski  
/s/ Janet T. Neff  
/s/ Helene N. White