STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

QUIN-DALE ALAIN GORDON-WOOD,

Defendant-Appellant.

UNPUBLISHED
February 18, 2010

No. 287515
Wayne Circuit Court
LC No. 08-003760-FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ISHMAEL PEREZ DAVIS,

Defendant-Appellant.

No. 287736
Wayne Circuit Court
LC No. 08-003760-FC

Before: Gleicher, P.J., and O'Connell and Wilder, JJ.

PER CURIAM.

In Docket No. 287515, defendant, Quin-Dale Alain Gordon-Wood, appeals as of right his jury trial convictions of two counts of assault with intent to rob while armed, MCL 750.89, one count of felonious assault, MCL 750.82, and one count of possession of a firearm during the commission of a felony, MCL 750.227b. Gordon-Wood was sentenced to 9 to 20 years' imprisonment for each of the two assault with intent to rob while armed convictions, one to four years' imprisonment for the felonious assault conviction, and two years' imprisonment for the felony-firearm conviction. We affirm.

In Docket No. 287736, defendant, Ishmael Davis, appeals as of right his bench trial convictions of two counts of assault with intent to rob while armed, MCL 750.89. Davis was sentenced to 9 to 15 years' imprisonment for each of the assault with intent to rob while armed convictions. We affirm.

The convictions in these two appeals concern the same incident and the same two complainants, Devontia Collins and Ivan Bullock.

A

At approximately 2:00 a.m. on February 25, 2008, Devontia Collins was driving his friend, Ivan Bullock, to meet Gordon-Wood. Gordon-Wood went by the nickname, "Q." Collins and Bullock were to pick up Gordon-Wood from 4140 St. Antoine, an apartment building directly across the street from Detroit Receiving Hospital. Upon arrival at 4140 St. Antoine, Collins and Bullock were surprised to see that Gordon-Wood was not alone; he was with another individual, Davis. Bullock was suspicious of Davis because he was wearing a "hoodie" sweatshirt and appeared to be trying to conceal his face with it. Bullock demanded that Davis lift his shirt and turn around to make sure he was not carrying any weapons. When nothing unusual was seen on Davis, everyone entered the vehicle. Collins was seated in the front driver's seat, and Bullock was seated in the front passenger seat. The passenger-side, rear door did not work, so Gordon-Wood entered the driver-side rear door first and slid across to sit behind Bullock, and Davis sat behind Collins.

Collins started to drive away towards his home, where they would "chill out" and smoke marijuana. When Collins mentioned he only had two blunts at his house, Gordon-Wood suggested returning to the apartments so he could pick up some more marijuana. Collins then made a U-turn and returned to 4140 St. Antoine, where he pulled into the apartments' parking lot.

Davis started to get out of the car, when he stopped and looked at Gordon-Wood. At that point, Gordon-Wood pulled out a .357 gun and shouted, "Put your goddamn hands up!" Then one, or both, defendants demanded, "What the fuck you all got?"[1] Gordon-Wood pointed the gun first at Bullock's face, and then at Collins's face. Collins testified that Davis "started grabbin' on me," but Collins told him he did not have anything. Then, Davis turned his attention to Bullock and took Bullock's iPhone and earphones.

While Davis was attempting to get items from Collins and Bullock, Gordon-Wood attempted to slide by Davis to exit the car. When Gordon-Wood was moving across the rear seat, Bullock reached for the gun in Gordon-Wood's hand. The two were struggling over the gun, when it went off, grazing Bullock's hand. Gordon-Wood then managed to get by Davis and fell out of the vehicle's driver-side rear door.

Collins exited the car and moved towards Gordon-Wood, who was lying on his back. When Collins was standing nearly over Gordon-Wood, Gordon-Wood shot Collins in the stomach. Collins immediately grabbed for the gun and successfully wrested it away. While this tussling was taking place, Davis had exited the car, as well, and was very close to Collins and Gordon-Wood. Collins turned the gun around and took a shot at Gordon-Wood but apparently missed. At that point, both defendants took off running in opposite directions.

[1] Collins testified that Davis made the demand, while Bullock testified that Gordon-Wood made the demand.

Collins retrieved Bullock's iPhone, which had fallen to the ground, when he realized that he was shot in the stomach. Bullock drove Collins across the street to Detroit Receiving Hospital, where Collins underwent surgery and stayed in the hospital for a week.

B

Gordon-Wood first argues that he should be resentenced because an alleged scoring error caused an incorrect guidelines range to be used at sentencing. We disagree.

The sentencing court has the discretion to determine the number of points to be scored provided that there is evidence on the record that adequately supports a particular score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). This Court's review of the scoring is to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supported a particular score. *People v Steele*, 283 Mich App 472, 490; 769 NW2d 256 (2009). "Scoring decisions for which there is any evidence in support will be upheld." *Hornsby, supra* at 468.

Gordon-Wood claims that the ten points scored for Offense Variable 4 (OV 4) was incorrect. OV 4 deals with the degree of psychological injury suffered by a crime victim. MCL 777.34. Ten points is properly scored when serious psychological injury requiring professional treatment occurred to a victim. *People v Hicks*, 259 Mich App 518, 535; 675 NW2d 599 (2003); MCL 777.34. The fact that professional treatment was not sought is not conclusive when scoring the variable. *People v Wilkens*, 267 Mich App 728, 740; 705 NW2d 728 (2005); MCL 777.34(2).

Gordon-Wood alleges that there was nothing in the record to support a finding of a serious psychological injury to either victim. Gordon-Wood bases this claim on the fact that neither victim testified at trial regarding any psychological injuries. However, in addition to the record created during the trial, sentencing courts can rely upon presentence reports. *People v Callon*, 256 Mich App 312, 334; 662 NW2d 501 (2003). In this case, the presentence report records a statement from Collins's mother that Collins had suffered psychological injuries and would be seeking psychological therapy. The sentencing court properly considered this statement when it calculated the sentencing guidelines and did not abuse its discretion when it scored ten points for OV 4. This case is distinguishable from the unpublished cases Gordon-Wood relies on since those cases involved situations where there was no evidence of psychological injury at all.

Gordon-Wood next argues that there was insufficient evidence to support his two assault with intent to rob while armed convictions. We disagree.

A challenge to the sufficiency of the evidence is reviewed de novo and in a light most favorable to the prosecution to determine "whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). "All conflicts with regard to the evidence must be resolved in favor of the prosecution. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *Wilkens, supra* at 738 (internal citations omitted).

In order to obtain a conviction of assault with intent to rob while armed, the prosecution must prove the following: "(1) an assault with force and violence; (2) an intent to rob or steal; and (3) the defendant's being armed." *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003).

Gordon-Wood brings a sufficiency of the evidence challenge on appeal, but his argument focuses on challenging the credibility of Collins and Bullock. However, this Court does not interfere with the fact-finder's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007).

Both Collins and Bullock identified Gordon-Wood as the person who pulled the gun out and pointed it. Bullock testified that Gordon-Wood pointed the gun initially at his face and then later at Collins's face. This was sufficient evidence to show that Gordon-Wood assaulted both complainants and was armed, satisfying two of the three elements for each count related to each complainant. The remaining element is whether Gordon-Wood had the specific intent to rob both Collins and Bullock. "[M]inimal circumstantial evidence will suffice to establish the defendant's state of mind, which can be inferred from all the evidence presented." *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). The evidence presented was more than sufficient to prove beyond a reasonable doubt that Gordon-Wood intended to rob Collins and Bullock. First, given how Gordon-Wood held the gun while Davis grabbed at both Collins and Bullock in order to locate and to take items, a jury could reasonably infer that Gordon-Wood possessed the intent to rob both complainants. Second, Bullock testified that Gordon-Wood said, "What the fuck you all got?" when he brandished the gun. This statement using the word "all" also would be sufficient for a jury to conclude that Gordon-Wood had the specific intent to rob *both* Collins and Bullock. The fact that Collins testified that Davis asked that question and not Gordon-Wood is an evidentiary conflict that is resolved on appeal in favor of the prosecution. *Wilkens, supra* at 738. Thus, viewing the evidence in a light most favorable to the prosecution reveals that both defendants made this demand.

Therefore, there was sufficient evidence to support Gordon-Wood's convictions for assault with intent to rob while armed with respect to both complaints, Collins and Bullock.

C

Davis argues that there was insufficient evidence to support his conviction of assault with intent to rob while armed with respect to complainant Collins. We disagree.

One who procures, counsels, aids, or abets in the commission of an offense may be convicted and punished as if the person directly committed the offense. *People v Robinson*, 475 Mich 1, 5-6; 715 NW2d 44 (2006); MCL 767.39. To support a verdict that a defendant aided and abetted a crime, the prosecutor must prove 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 [the defendant] gave aid and encouragement." *People v Moore*, 470 Mich 56, 67-68; 679 NW2d 41 (2004). "An aider and abettor's state of mind may be inferred from all the facts and circumstances." *People v Carines*, 460 Mich 750, 758; 597 NW2d 130 (1999). Some of the factors that may be considered

include a close association between the defendant and the principal and the defendant's participation in the planning or execution of the crime. *Id.*

Davis claims that there was no evidence to show that there was an attempt to rob Collins. A fact-finder could reasonably infer otherwise. Here, the evidence shows that Davis started to exit the vehicle but stopped to look back at Gordon-Wood. At that point, Gordon-Wood pulled the gun and waived it at *both* Bullock's and Collins's faces. This gun waiving was coupled with both defendants demanding, "What the fuck you all got?"[2] Collins testified that Davis then immediately "started grabbin' on me," and stopped when Collins told him he did not have anything. Only then, did Davis turn his attention to Bullock and take Bullock's iPhone and earphones.

The fact-finder could have reasonably concluded beyond a reasonable doubt that the three elements of aiding and abetting under *Moore* were present. First, the crime of assaulting Collins with an intent to rob while armed was committed by the principal, Gordon-Wood. Second, Davis shouting, "What the fuck you all got?" along with his "grabbin' on" Collins aided and encouraged Gordon-Wood to maintain the assault. Third, Davis gave this aid and encouragement at the time Gordon-Wood's actions demonstrated his intent to assault Collins with an intent to rob while armed. Therefore, under the aiding and abetting theory, there is sufficient evidence to support Davis's conviction for assaulting Collins with an intent to rob while armed.

Davis next argues that he should be resentenced even though he was sentenced within the proper guidelines range.[3] We disagree.

First, in the statement of questions presented, Davis framed the issue as one regarding an abuse of discretion on the part of the trial judge. However, in Davis's argument section in his brief, he does not argue this issue; instead, Davis solely argues that MCL 769.34(10)[4] is unconstitutional. Given that a defendant may not merely announce a position in the statement of questions presented and leave this Court to discover and rationalize the basis for his claims, Davis has waived any issue based on the trial court's abuse of discretion. See *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). In any event, a sentence within the guidelines is presumed proportional and an appropriate exercise of the trial court's discretion. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008).

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[2] As noted, *supra*, there was evidence presented that both defendants made this demand.

[3] Davis was sentenced to a minimum sentence of 108 months, while the guidelines range was 108 to 180 months.

[4] MCL 769.34(10) precludes appellate review under certain circumstances: "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. . . ."

Likewise, since Davis's issue of the constitutionality of MCL 769.34(10) was only raised in the main body of his brief, it was not properly presented in his statement of the questions presented as required by MCR 7.212(C)(5). Accordingly, Davis has waived this argument as well. See *People v Unger (On Remand)*, 278 Mich App 210, 262; 749 NW2d 272 (2008).

Moreover, the Michigan Supreme Court, in *People v Garza*, 469 Mich 431, 435; 670 NW2d 662 (2003), previously held that the challenged provision was constitutional. This Court is bound by stare decisis to follow the decisions of our Supreme Court. *Griswold Properties, LLC v Lexington Ins Co*, 276 Mich App 551, 563; 741 NW2d 549 (2007). Thus, only the Supreme Court may overrule its prior decisions. *Paige v Sterling Heights*, 476 Mich 495, 524; 720 NW2d 219 (2006). Accordingly, this Court is bound to uphold the constitutionality of MCL 769.34(10).

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder