STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HYKEEM DOSS,

Defendant-Appellant.

UNPUBLISHED
November 24, 2009

No. 287603
Wayne Circuit Court
LC No. 08-003198-FC

Before: Talbot, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of carjacking, MCL 750.529a. Defendant was sentenced to a prison term of 5 to 15 years. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that his custodial statement lacked sufficient guarantees of trustworthiness and, therefore, the trial court erred in admitting the statement under MRE 804(b)(7). Nothing in the record suggests that defendant's statement was admitted under MRE 804(b). That rule creates an exception for hearsay statements that are otherwise inadmissible under MRE 802, if the declarant is unavailable. Here, however, defendant appeared at trial and the prosecutor offered his statement against him. Therefore, the statement was not hearsay. MRE 801(d)(2)(A).

Defendant also argues that the trial court erred in admitting his statement because it was not voluntarily made. In reviewing a trial court's decision on a motion to suppress a confession, this Court reviews the record de novo but will defer to the trial court's factual findings unless they are clearly erroneous. *People v Harris*, 261 Mich App 44, 53; 680 NW2d 17 (2004). A finding is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *People v Shipley*, 256 Mich App 367, 373; 662 NW2d 856 (2003). But if resolution of a disputed fact depends on the credibility of the witnesses or the weight of the evidence, this Court will defer to the trial court's determination. *Id.*; *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000).

"A statement obtained from a defendant during a custodial interrogation is admissible only if the defendant voluntarily, knowingly, and intelligently waived his Fifth Amendment rights." *People v Akins*, 259 Mich App 545, 564; 675 NW2d 863 (2003). "The burden is on the prosecution to prove voluntariness by a preponderance of the evidence." *Id.* Whether a

confession is voluntary is determined by examining the conduct of the police. *People v Tierney*, 266 Mich App 687, 707; 703 NW2d 204 (2005). Absent police coercion or misconduct, the issue whether a confession was voluntary cannot be resolved in a defendant's favor. *People v Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997). "The test of voluntariness is whether, considering the totality of all the surrounding circumstances, the confession is the product of an essentially free and unconstrained choice by its maker, or whether the accused's will has been overborne and his capacity for self-determination critically impaired." *People v Givans*, 227 Mich App 113, 121; 575 NW2d 84 (1997).

Relevant factors in determining voluntariness include the defendant's age; the defendant's education or intelligence level; the extent of defendant's previous experience with the police; whether defendant was subjected to repeated and prolonged questioning; whether the defendant was advised of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he made his statement; whether the defendant was injured, intoxicated or drugged, or in ill health when he made the statement; whether the defendant was deprived of food, sleep or medical attention; and whether he was physically abused or threatened with abuse. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). Whether the defendant was promised leniency in exchange for a confession is another factor to be considered. *Shipley*, *supra* at 373. "The absence or presence of any one of these factors is not necessarily conclusive on the issue of voluntariness," *Cipriano*, *supra* at 334, and "[n]o single factor is determinative." *Tierney*, *supra* at 708. The ultimate test of admissibility is whether the totality of the circumstances indicates that the statement was freely and voluntarily made. *Cipriano*, *supra*. Confessions are not required to be electronically recorded to be admissible. *People v Fike*, 228 Mich App 178, 183-186; 577 NW2d 903 (1998).

According to Roland Brown, the officer who took defendant's statement, defendant was advised of his rights, indicated that he understood them, and agreed to waive them as indicated by the fact that he initialed each right and signed the advice-of-rights form. Brown testified that defendant denied being ill or under the influence of any medication, drugs, or alcohol. Brown stated that he did not use force or coercion against defendant, and defendant initialed and signed the advice-of-rights form, thereby indicating that he had "not been threatened or promised anything." Brown reduced defendant's statement to writing and defendant signed it. Defendant did not deny that he was advised of his rights or that he initialed and signed the form. Rather, he stated, "I don't remember him reading me my rights" and "I ain't understand what I was signing." Defendant testified in a contradictory manner regarding the statement itself. On the one hand, he testified that he did not admit to participating in the crime and that Brown falsely attributed a codefendant's statement to him. On the other hand, he implied that he did admit to participating in the crime (he said he would say anything not to go to prison) because Brown promised that he would be allowed to go home afterward and he would be sentenced to a year in boot camp. Given the conflicting evidence, and giving due regard to the trial court's determination that Brown was the more credible witness, the trial court did not clearly err to the extent that it found that defendant's statement was voluntarily made.

Defendant next argues that the evidence was insufficient to support his conviction. In reviewing a verdict reached in a bench trial, we review the trial court's factual findings for clear error and its conclusions of law de novo. *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). This Court reviews the evidence in a light most favorable to the

prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). "An appellate court will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses." *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

The elements of carjacking are that (1) the defendant used force or violence against or assaulted the victim, (2) the defendant did so while he was in the course of committing a larceny of a motor vehicle, and (3) the victim was the operator, passenger, or person in lawful possession of the motor vehicle. MCL 750.529a(1); CJI2d 18.4a. A larceny is the taking and asportation of the vehicle without the owner's consent with the intent to deprive him of it permanently. CJI2d 18.4a(3); *People v Perkins*, 262 Mich App 267, 271-272; 686 NW2d 237 (2004).

In this case, defendant was charged as an aider and abettor. A person aids or abets in the commission of a crime if that person "is present at the crime scene and by word or deed gives active encouragement to the perpetrator of the crime, or by his conduct makes clear that he is ready to assist the perpetrator if such assistance is needed." *People v Moore*, 470 Mich 56, 63; 679 NW2d 41 (2004) (citation omitted). The elements that must be proved to convict a defendant as an aider and abettor are that (1) the crime charged was committed by the defendant or some other person, (2) the defendant aided and abetted the commission of the crime, and (3) "the defendant intended to aid the charged offense [and] knew the principal intended to commit the charged offense or, alternatively, that the charged offense was a natural and probable consequence of the commission of the intended offense." *People v Robinson*, 475 Mich 1, 15; 715 NW2d 44 (2006); *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995), disapproved on other grounds by *People v Mass*, 464 Mich 615, 628; 628 NW2d 540 (2001). "The quantum of aid or advice is immaterial as long as it had the effect of inducing the crime." *People v Lawton*, 196 Mich App 341, 352; 492 NW2d 810 (1992). "An aider and abettor's state of mind may be inferred from all the facts and circumstances. Factors which 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." *Turner, supra* at 568-569 (citations omitted).

The victim testified that he was accosted by a man with a gun who demanded his car and acceded to his request. The man and his partner drove away in the victim's car, which was not recovered until defendant crashed it. Such evidence showed that the crime of carjacking was committed by persons other than defendant. Brown testified that defendant admitted that he and his friends were planning "to jack somebody" and drove around until they found a likely victim. Defendant's friends, one of whom was armed with a gun, went to confront the victim on foot while defendant was to follow behind in the car, acting as a lookout. A defendant can be found guilty as an aider and abettor when he acts as the lookout. *People v Davenport*, 122 Mich App 159, 162; 332 NW2d 443 (1982). The trial court stated that it believed Brown's testimony that defendant did in fact admit to participating in the crime. Giving due deference to the trial court's determination of witness credibility, it cannot be said that the court erred in finding that defendant admitted to participating in the crime and that his admission, coupled with the victim's testimony, was sufficient to prove beyond a reasonable doubt that defendant aided and abetted in the carjacking.

Defendant next argues that in acquitting him of armed robbery but convicting him of carjacking, the trial court improperly rendered inconsistent verdicts. A judge conducting a bench trial must render consistent verdicts. *People v Ellis*, 468 Mich 25, 27-28; 658 NW2d 142 (2003). Verdicts are inconsistent if they cannot be rationally reconciled with the trial court's underlying factual findings, as where the court finds a defendant guilty of felonious assault predicated on the use of a firearm but acquits the defendant of possessory weapons offenses. *Id.* at 27.

In this case, the trial court initially found defendant guilty of armed robbery as well as carjacking. When defense counsel interrupted to "clarify" a point mentioned by the court, the court apparently agreed that counsel was correct and changed its verdict to guilty of carjacking only. Because the inconsistency, which inured to defendant's benefit, clearly resulted from defendant's actions and "a party waives the right to seek appellate review when the party's own conduct directly causes the error," *People v McPherson*, 263 Mich App 124, 139; 687 NW2d 370 (2004), we find no basis for relief.

Defendant next argues that he is entitled to resentencing. Defendant's minimum sentence is within the sentencing guidelines range of 51 to 85 months. MCL 777.16y; MCL 777.62. "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." MCL 769.34(10).

Although defendant contends that the trial court sentenced him on the basis of inaccurate information, he does not identify any particular statements in the presentence report that were incorrect. Defendant also argues that the trial court either relied on improperly admitted evidence or unreliable evidence in scoring the guidelines, but does not identify the evidence to which he refers, identify the specific prior record or offense variables to which the evidence related, or explain why correction of any alleged error would lead to a different score or guidelines range. Therefore, the issue has been abandoned. *Harris, supra* at 50. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims." *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004) (citations omitted).

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Alton T. Davis