

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC LEE JOBSON,

Defendant-Appellant.

UNPUBLISHED

May 7, 1996

No. 177177

LC No. 93 011370

Before: Reilly, P.J., and Michael J. Kelly and C.L. Bosman,* JJ.

PER CURIAM.

Defendant was convicted of felonious assault, MCL 750.82; MSA 28.277 at his bench trial in Detroit Recorder's Court on April 12, 1994. Defendant was sentenced to a term of probation of five years with the first 300 days to be served in jail. Defendant appeals as of right claiming the trial court erred in finding defendant guilty of felonious assault as the prosecution failed to prove that defendant committed an assault with a dangerous weapon. There was no evidence defendant possessed or fired a gun during the incident.

The test used for reviewing the sufficiency of the evidence in a criminal case is whether viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). A trier of fact may draw reasonable inferences from facts which are supported by either direct or circumstantial evidence. *People v Legg*, 197 Mich App 131,132; 494 NW2d 797 (1992). This record supports reasonable inferences of aiding or abetting. The evidence presented at trial was sufficient to establish defendant's guilt for the crime of felonious assault. The testimony elicited at trial indicated that a shot was fired through complainant's car window with the intent to injure, and that defendant participated in the commission of this act.

* Circuit judge, sitting on the Court of Appeals by assignment.

On appeal, both the prosecution and defendant have incorrectly focused their attention on whether or not sufficient evidence was presented that defendant possessed or fired a dangerous weapon. The trial judge clearly stated in his findings of fact that defendant could not be guilty of felony firearm because of a lack of testimony showing that he fired a gun or ever had it in his hand. However, the judge did find defendant guilty of felonious assault, noting his participation in supporting an act of shooting into the complainant's car. Implicit in the judge's ruling is conviction based on the theory of aiding and abetting.

In order to convict a defendant as an aider or abettor, MCL 767.39; MSA 28.979, the evidence must show that defendant or another committed the crime, that the defendant encouraged, aided or assisted in the commission of the crime, and that the defendant intended the commission of the crime or knew the principal intended its commission at the time the defendant encouraged, aided or assisted. *People v Jones (On Rehearing)*, 201 Mich App 449, 451; 506 NW2d 542 (1993), . The prosecution need only prove that the underlying crime was committed by someone, and that the defendant encouraged, aided or abetted in the commission.

At the time of the incident, defendant and Taylor were involved in an argument. This type of altercation had gone on before in the presence of defendant's friends. Just prior to the incident, defendant was summoned outside of the house on Green Street. It is reasonable to believe that his action of raising his hands in a threatening manner toward Taylor encouraged the criminal conduct of others. Sufficient evidence was presented at trial to establish that defendant was guilty of felonious assault under a theory of aiding and abetting.

Affirmed.

/s/ Maureen Pulte Reilly

/s/ Michael J. Kelly

/s/ Calvin L. Bosman