

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARY HARRIS,

Defendant-Appellant.

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UNPUBLISHED

June 25, 1996

No. 175186

LC No. 93-128843-FH

Before: Hoekstra, P.J., and M.J. Kelly and J.M. Graves, Jr.,\*JJ.

PER CURIAM.

Following a bench trial in the Oakland Circuit Court, defendant was convicted of two counts of breaking and entering an occupied dwelling with intent to commit a felony, MDL 750.110; MSA 28.305, three counts of attempted unlawful driving away of an automobile (UDAA), MCL 750.413; MSA 28.645, and larceny over \$100, MCL 750.356; MSA 28.588. Defendant also pleaded guilty to being a fourth habitual felony offender, MCL 769.12; MSA 28.1084, and was sentenced to serve a term of three to thirty years, imprisonment. Defendant appeals as of right and we affirm.

Defendant first claims the evidence presented at trial was insufficient to support his convictions. In part, defendant's argument is based on an affidavit that was not part of the record below. Because affidavits may not serve to enlarge a record on appeal, it will not be considered by this Court. *In re Norris Estate*, 151 Mich App 502, 507; 391 NW2d 391 (1986). Additionally, defendant contends that the testimony of a codefendant established that defendant had no intent to participate in the crimes. When reviewing a claim of insufficient evidence following a bench trial, the Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). Circumstantial evidence and reasonable inferences, arising from the evidence, may constitute satisfactory proof of the elements of the offense. *Id.* Based on our review of the evidence we find defendant's claim to be without merit. In his own statements to the police, defendant admitted having knowledge that the codefendants intended to

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

commit these crimes. Moreover, it could reasonably be inferred from the eyewitness testimony presented at trial that defendant participated in the crimes.

Defendant's next argument appears to be a challenge to the trial court's findings of fact. This Court reviews a trial court's findings of fact for clear error. MCR 2.613(C). A finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 171; 530 NW2d 772 (1995). Here defendant claims that the trial court's findings of fact are erroneous because the evidence did not support a finding that he participated in the crimes, either as a perpetrator or as an aider and abettor. Defendant believes the evidence established only his mere presence without any culpability. Although this is perhaps one possible interpretation of the evidence, it is not the only one. The prosecution, in a circumstantial evidence case, is not required to disprove all possible theories of innocence. *People v Dutra*, 155 Mich App 681, 684; 400 NW2d 619 (1986). In the instant case, the trial court accepted a version of the facts which was supported by the evidence and consistent with defendant's guilt. From our review of the record, we find no clear error in that decision.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Michael J. Kelly

/s/ James M. Graves, Jr.