

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

June 28, 1996

Plaintiff-Appellee,

v

No. 183427

LC No. 94-000623

SNEEDEN MOUZON,

Defendant-Appellant.

Before: Griffin, P.J., and Bandstra and M. Warshawsky,* JJ.

PER CURIAM.

Defendant appeals as of right his conviction by jury of unlawfully driving away an automobile, MCL 750.413; MSA 28.645, under an aiding and abetting theory, MCL 767.39; MSA 28.979. Defendant was sentenced to three years' probation with the first twelve months to be served in the William Dickerson facility. We affirm.

Defendant first contends that there was insufficient evidence to support his conviction of aiding and abetting the unlawful driving away of an automobile. In examining defendant's sufficiency of the evidence claim, this Court reviews the evidence in the light most favorable to the prosecutor and determines whether, given the evidence as a whole, a rational trier of fact could find that all of the necessary elements of the charged offense were established beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Lawton*, 196 Mich App 341, 348; 492 NW2d 907 (1992).

In order to support a conviction of aiding and abetting pursuant to MCL 767.39; MSA 28.979, the prosecutor must show 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 he gave aid and encouragement." *People v Turner*, 213 Mich App

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

558; 568; 540 NW2d 728 (1995). Defendant challenges the sufficiency of the evidence presented as to each element of aiding and abetting.

The prosecutor presented sufficient evidence to establish that the underlying charge of unlawfully driving away an automobile was committed. Unlawfully driving away an automobile, has four essential elements:

1. First, that the vehicle belonged to someone else.
2. Second, that the defendant took possession of the vehicle and [drove/took] it away.
3. Third, that these acts were both done [without authority/without the owner's permission.]
4. Fourth, that the defendant intended to take possession of the vehicle and [drive/take] it away. It does not matter whether the defendant intended to keep the vehicle. [CJI2d 24.1.]

The evidence presented at trial was sufficient to prove each of these elements beyond a reasonable doubt. The vehicle in question belonged to complainant. On the evening of December 27, 1993, complainant was forced at gunpoint to turn over the keys of her vehicle to a man who had approached her while she was pumping gasoline. Once the man had possession of the keys, he got into her vehicle and drove it away without her permission. Thus, the prosecution provided sufficient evidence to establish that the underlying crime of unlawfully driving away an automobile was committed.

The prosecution was also able to prove beyond a reasonable doubt that defendant assisted in the commission of the crime. Defendant told police that he had taken an acquaintance to the gas station on December 27, 1993. Defendant explained that this acquaintance subsequently came up with the idea of committing a robbery. Defendant went along with the plan. At the gas station, his acquaintance exited defendant's vehicle, pulled out a gun, and stole complainant's vehicle. During this time, defendant admitted to acting as a lookout.

Although defendant attempted to repudiate his statements to the police by testifying that his statements were coerced and that he had had nothing to do with the taking of complainant's vehicle, the jury did not believe defendant's testimony. The issue whether defendant was testifying truthfully is a credibility question which is "left to the trier of fact and will not be resolved anew by this Court." *People v Premen*, 210 Mich App 211, 221; 532 NW2d 872 (1995).

Further, the prosecutor established beyond a reasonable doubt that defendant possessed the requisite intent for aiding and abetting. The intent element required for aiding and abetting is satisfied by evidence demonstrating that the defendant possessed the specific intent or that he knew that the principal possessed that intent at the time he rendered assistance. See *People v McCray*, 210 Mich App 9, 14; 533 NW2d 359 (1995); *People v King*, 210 Mich App 425, 431; 534 NW2d 534 (1995). The evidence presented demonstrated that defendant knew that the acquaintance he was

taking to the gas station had a plan to commit a robbery. Knowing this, defendant assisted this acquaintance by acting as a lookout while complainant's vehicle was stolen.

On this record, a rational trier of fact could find that each element necessary to convict defendant of aiding and abetting in the unlawful driving away of an automobile was established beyond a reasonable doubt. We find no error warranting reversal.

Next, defendant contends that the trial court erred in instructing the jury as to the intent element of the crime of aiding and abetting because the trial court instructed the jury that defendant could be convicted if he knew that the principal intended to commit the crime. After reviewing the jury instructions as a whole, we find no error.

Over the prosecutor's objection, the trial court included the mere presence instruction which states, "[e]ven if the defendant knew that the alleged crime was planned or was being committed, the mere fact that he was present when it was committed is not enough to prove that he assisted in committing it." CJI2d 8.5.¹ Thus, the trial court clearly instructed the jury that knowledge in conjunction with presence was insufficient to find that defendant aided and abetted in the charged crime. Moreover, the remainder of the trial court's instructions with respect to unlawfully driving away an automobile and aiding and abetting was consistent with the requisites of Michigan law. Thus, we hold that the trial court did not commit any error in instructing the jury.

Affirmed.

/s/ Richard Allen Griffin
/s/ Richard A. Bandstra
/s/ Meyer Warshawsky

¹ The trial court gave the mere presence instruction to the jury on two occasions. Once when initially charging the jury and again when the jury requested additional instructions regarding the elements of aiding and abetting.