

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

OSBON L. ANDERSON,

Defendant-Appellant.

UNPUBLISHED

July 16, 1996

No. 182224

LC No. 94-006013

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY CHAFIN,

Defendant-Appellant.

No. 182225

LC No. 94-006013

Before: Gribbs, P.J., and Saad and J. P. Adair,* JJ.

PER CURIAM.

Following a bench trial, defendants were convicted of burning of other real property, MCL 750.73; MSA 28.268, and two counts of assault with intent to murder, MCL 750.83; MSA 28.278. Defendants were sentenced to concurrent terms of eighty months to ten years' imprisonment for arson and eight to twenty years on each of the assault convictions. Defendant Anderson was given credit for seventy days served. Defendants' respective appeals of right have been consolidated. We affirm.

In the early morning hours of May 21, 1994, defendants were at a "blind pig" located in the City of Detroit. After being involved in a dispute over a game of craps, defendant Anderson and his companion, defendant Chafin, remained in the bar and refused to leave when requested to do so.

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

Eventually they left of their own volition, but returned one half-hour later, only to be denied re-admittance. Defendants remained outside the building and attempted to force their way in when other patrons opened the doors to leave. After security personnel physically removed defendants from the doorway, they departed, but returned with gasoline and poured it on the building. Defendant Anderson then ignited the gasoline with a match, and also attempted to throw a flaming object on the roof. Defendants retrieved more gasoline and once again splashed it on the building. The fire had burned itself out by the time the police arrived at the bar.

Defendants contend that the prosecutor failed to present sufficient evidence to establish the intent element of the offense of assault with intent to murder. In order to convict a person of assault with intent to murder, the prosecutor must prove that the defendant had the actual intent to kill. *People v Barclay*, 208 Mich App 670, 674; 528 NW2d 842 (1995). A person who aids or abets in the commission of a crime may be convicted as if he directly committed the offense. *People v Turner*, 213 Mich App 558, 568; ___ NW2d ___ (1995). The prosecutor must show that the defendant aided the commission of the crime and either intended the commission of the crime or acted with knowledge that the principal so intended. *People v Sean Jones (On Rehearing)*, 201 Mich App 449, 551; 506 NW2d 542 (1993). Moreover, a “defendant may be charged as a principal but convicted as an aider and abettor.” *Turner, supra* at 568. Viewing the evidence in a light most favorable to the prosecution, we find that there was sufficient evidence from which a rational trier of fact could find beyond a reasonable doubt that defendant Anderson intended to kill and that defendant Chafin either intended to kill or acted with the knowledge that defendant Anderson so intended. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, modified 441 Mich 1201 (1992); *People v Petrella*, 424 Mich 221, 269; 380 NW2d 11 (1985). Defendants intentionally set fire to the only door from which the patrons of the bar could exit and defendant Anderson made menacing gestures to discourage the patrons from leaving through the door. The trier of fact could infer that defendants knew there were people in the building from the fact that they and other patrons were in the building shortly before the fire was set.

In light of our determination that there was sufficient evidence to convict defendant Chafin of assault with intent to murder, he is not entitled to be resentenced on his arson conviction.

Affirmed.

/s/ Roman S. Gibbs
/s/ Henry William Saad
/s/ James P. Adair