STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SEAN DEDRICK RODEN,

Defendant-Appellant.

UNPUBLISHED
November 12, 1996

No. 184975
LC No. 94-002706

Before: MacKenzie, P.J., and Jansen and T.R. Thomas*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of aiding and abetting an unarmed robbery, MCL 750.530; MSA 28.798 and MCL 767.39; MSA 28.979, and was sentenced to four to fifteen years' imprisonment. Because defendant was on parole at the time of the robbery, his sentence was ordered to be served "consecutively to any sentence that you receive as part of parole violation proceedings." Defendant appeals as of right. We affirm.

Defendant first argues that the prosecutor failed to present sufficient evidence as to elements of intent and assistance which must be established in order to support a finding of aiding and abetting. *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995), see also CJI2d 8.1. When reviewing a challenge to the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could find the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

In this case, trial testimony established that defendant drove long-time friend Robert Jackson, the principal in the offense, to the area of Russ' Restaurant, where Jackson intended to "borrow some money." After Jackson left the vehicle, defendant waited with the car running, backed into a parking space, and with the passenger window down. When Jackson returned, he was carrying a purse and was being chased by a man who had seen him grab the purse from an elderly woman. Jackson dove into the car through the open passenger window and defendant immediately drove away.

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

Aiding and abetting is broadly construed so as to include all forms of assistance rendered to the perpetrator of a crime. *Turner, supra* at 568. Here, the evidence presented at trial, when viewed in a light most favorable to the prosecutor, was sufficient to establish that defendant assisted Jackson in the commission of unarmed robbery. Moreover, viewed in a light most favorable to the prosecution, the evidence was sufficient to establish that "defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement." CJI 8.1(3)(c). An aider and abettor's state of mind may be inferred from all the facts and circumstances. *Turner, supra* at 568. Various factors can be considered in determining an aider and abettor's state of mind, including 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. *Id* at 569. Applying these factors to the facts of this case, there was sufficient evidence upon which the trier of fact could find that defendant either intended to commit the crime or knew that Jackson intended the crime at the time defendant rendered assistance. *Id.* at 569.

Next, defendant argues that he was denied a fair trial because the prosecutor improperly commented on facts not in evidence and misstated the law. We disagree.

During rebuttal closing argument, the prosecutor stated:

> I said in my opening statement that Daniel Sims was in the back of the car, but that he had nothing to do with it or no knowledge. I stand by this, which is why he's not here today. It is not to prevent anyone from hearing the story. I presented the evidence as I had it in front of me.

Defendant's characterization of this statement as an argument based on facts not in evidence is erroneous. The unsupported factual statements which prosecutor's are prohibited from making are factual statements which go directly to the factual issues of the case being tried. See *People v Dane*, 59 Mich 550, 552; 26 NW 781 (1886). Because the prosecutor's statement did not provide any insight into the facts of this case, it did not constitute an improper statement of facts not in evidence. Moreover, even if the prosecutor's comments were improper, they were made in response to defendant's argument that the prosecutor declined to produce Sims as a witness in order to keep vital information from the jury. Accordingly, reversal would not be required. *People v Duncan*, 402 Mich 1, 16; 260 NW2d 58 (1977).

Defendant also argues that the prosecutor misstated the law during her closing argument when she indicated that she did not have to show a common plan or scheme to establish that defendant had aided and abetted in the commission of the unarmed robbery. We disagree. Although aiding and abetting requires a showing of concert of action, *see People v Brown*, 120 Mich App 765, 770; 328 NW2d 380 (1982), there is no requirement that a defendant and principal have a prior plan, scheme, or agreement. *Turner, supra* at 568; *see also* CJI2d 8.1. Thus, the prosecutor's statement was not a misstatement of the law.

Defendant next argues that the trial court erred in giving an objected to jury instruction on flight. Again, we disagree. The evidence presented at trial indicated that defendant fled the scene with Jackson after Jackson, who was carrying a purse and was being pursued, dove into the car defendant was driving. *See People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995); *People v Hall*, 174 Mich App 686, 691; 436 NW2d 446 (1989). Because the evidence supported a finding of flight, the trial court was obligated to give the flight instruction requested by the prosecutor. *People v Mills*, 450 Mich 61, 81; 537 NW2d 909 (1995).

Finally, defendant argues that the trial court lacked the authority to sentence him to a term of imprisonment which was to run consecutively to the remainder of the maximum sentence for the offense for which he was on parole when this crime occurred. Contrary to defendant's argument, however, the trial court did not sentence defendant to a prison term consecutive to the remainder of the maximum sentence imposed for the offense for which he was on parole. The record expressly indicates that defendant's sentence was to be served "consecutively to any sentence that you receive as part of parole violation proceedings." This sentence is in accordance with MCL 768.7a(2); MSA 28.1030(1)(2) and our Supreme Court's holding in *People v Young*, 451 Mich 569; ___ NW2d ___ (1996).

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Kathleen Jansen
/s/ Terrence R. Thomas