STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARNELL MARCISE BOYD,

Defendant-Appellant.

UNPUBLISHED
January 7, 1997

No. 181359
Kent Circuit Court
LC No. 94-1399 FC

Before: Reilly, P.J. and MacKenzie, and B.K. Zahra,* JJ.

PER CURIAM.

Defendant was convicted by a jury of aiding and abetting armed robbery, MCL 750.529; MSA 28.797. This conviction arose from the car-jacking of a cab by defendant and an accomplice. As an habitual offender, third offense, defendant was sentenced to six to fifteen years of imprisonment, with credit for 199 days served. He appeals as of right. We affirm.

Defendant first contends that there was insufficient evidence to convict him of aiding and abetting the armed robbery. Specifically, defendant contends that the evidence was insufficient to convince a reasonable trier of fact that he had the necessary intent or knowledge of the principal's intent to commit the robbery. We disagree.

In reviewing the sufficiency of evidence, this Court must view the evidence in the light most favorable to the prosecution and decide whether the evidence is sufficient to justify a reasonable trier of fact in finding that the elements of the crime were proved beyond a reasonable doubt, and must not interfere with the jury's task of weighing the evidence or making determinations as to witnesses' credibility. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992).

Although there is no direct evidence of any verbal agreement between defendant and his accomplice, Stewart, to commit the robbery, the jury could reasonably conclude from the circumstantial

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

evidence presented and all reasonable inferences arising therefrom that defendant intended to commit the crime or had knowledge of the principal's intent to commit the crime at the time defendant gave the principal aid or encouragement. *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). Because the cab had just left a gas station and was heading for a destination only minutes away, it is reasonable to infer that defendant's stopping the cab to "use the restroom" was only a ruse to assist in the robbery. Further, prosecution witnesses gave descriptions, including height and clothing, comparing the two men in the stolen cab to defendant and Stewart, who were found within a mile of the crash site, sufficient to reasonably infer that defendant was the person driving the cab after the robbery.

It is not proper for this Court to interfere with the jury's duty of weighing the evidence or determining witnesses' credibility, and when viewed in the light most favorable to the prosecution, there is sufficient evidence to support the jury's finding that defendant had the requisite intent or knowledge of the principal's intent to commit the crime. *Wolfe, supra*, 440 Mich at 515.

Next, defendant contends that the prosecutor's injected remarks in cross-examination and closing, regarding defendant's involvement with drugs and drug dealing, denied him a fair trial. We disagree.

Because defendant failed to timely and specifically object, this Court's review of the allegedly improper remarks is precluded unless we find that an objection and timely instruction could not have cured the error, or a failure to review the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

In the present case, we find that the prosecutor's question to Stewart regarding selling drugs, taken in context, was not improper. The question followed testimony in which the witness admitting using drugs and could not explain his or defendant's whereabouts, and other testimony indicating that defendant and Stewart were far from home late at night, with a weapon, a pager, and a large sum of money, and were in a rush to get home. These facts gave the prosecutor a reasonable basis to question whether the witness and defendant had been involved in drug dealing.

Similarly, we do not find that any reversal is warranted because the prosecutor stated in closing that defendant and the witness were "high" on the night of the offense. A timely objection could have cured any prejudice. Rather than raise an objection, defense counsel responded to the prosecutor's assertion during the defense closing argument. Because any prejudice could have been cured and the issue was addressed in the defense closing argument, we conclude that our failure to review the issue further will not result in manifest injustice.

Defendant also challenges the prosecutor's implication in closing that common sense would indicate why defendant was in such a hurry to get out of town in the middle of the night, and the prosecutor's remark in closing rebuttal, "He and his beeper and his money are the only thing going back to Detroit." While these statements again might imply that defendant was involved in drug dealing, we conclude that this is not an unreasonable inference from the evidence presented. The prosecutor was merely relating the facts adduced at trial to her theory of the case that the robbery was committed in

order to ensure transportation because defendant and Stewart were in a hurry to get out of town and back home that night. Because the prosecutor is free to argue the evidence and all reasonable inferences arising from it to the jury, there was no error in these statements made by the prosecutor. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659.

In summary, the statements and question by the prosecutor regarding defendant's possible involvement with drugs and drug dealing, taken in context, do not require reversal of defendant's conviction. The statements and question were such that objections followed by timely instructions would have cured any possibility of prejudice; defendant was not denied a fair trial.

Affirmed.

/s/ Maureen P. Reilly
/s/ Barbara B. MacKenzie
/s/ Brian K. Zahra