

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STANLEY BERNARD SPANN,

Defendant-Appellant.

UNPUBLISHED

November 14, 1997

No. 199309

Recorder's Court

LC No. 94-013389

Before: Griffin, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), and unarmed robbery, MCL 750.530; MSA 28.798. Defendant was sentenced to five to twenty years in prison for the first-degree home invasion conviction, and five to fifteen years in prison for the unarmed robbery conviction, the two sentences to run concurrently. We affirm.

Defendant's sole issue on appeal is that the prosecution failed to present sufficient evidence to support his conviction. We disagree.

The offense of first-degree home invasion is defined as follows:

A person who breaks and enters a dwelling with intent to commit a felony or a larceny in the dwelling or a person who enters a dwelling without permission with intent to commit a felony or a larceny in the dwelling is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exist:

(a) The person is armed with a dangerous weapon.

(b) Another person is lawfully present in the dwelling. [MCL 750.110a(2); MSA 28.305(a)(2).]

Defendant first argues that there was insufficient evidence to convict him of breaking and entering because other than defendant's confession, there was no other evidence that linked defendant to the crime.

In this case, defendant confessed to committing the crime in a written statement which was read into the record at trial. Defendant's confession along with the other evidence presented at trial was sufficient to establish that defendant was involved in breaking and entering the victims' residence with the intent to commit a larceny while both victims were present. The victims testified that in the early morning hours of November 22, 1994, while they were present, their home was broken into and several items were stolen. Defendant's written confession states that he participated in the breaking and entering of the victims' house. Defendant also stated that the purpose of the breaking and entering was to commit larceny in the home. The victims' presence in the home during the commission of the crime elevates it to first-degree home invasion.

In his brief on appeal, defendant argues that the purported written confession was not written by him and therefore cannot be used as evidence to support his conviction. At the *Walker*¹ hearing, defendant denied making the written confession. Defendant, however, did not testify at his trial. Defendant's written confession was admitted into evidence during the trial.

This Court has stated that the question whether a defendant ever made a statement is a question of fact to be answered by the trier of fact. *People v Spivey*, 109 Mich App 36, 37; 310 NW2d 807 (1981). The jury in this case was instructed that it had to determine whether defendant in fact confessed in writing. Therefore, the evidence, when viewed in a light most favorable to the prosecution, was sufficient to convict defendant of first-degree home invasion.

There was also sufficient evidence presented to convict defendant of unarmed robbery. The unarmed robbery statute states in part that:

Any person who shall, by force and violence, or by assault or putting in fear, feloniously rob, steal and take from the person of another, or in his presence, any money or other property which may be the subject of larceny, such robber not being armed with a dangerous weapon, shall be guilty of a felony. . . . [MCL 750.530; MSA 28.798.]

Defendant claims that there was no evidence presented which shows that he either took items from the victims' home or that he struck anyone or knew that any of the other perpetrators would strike anyone in the house.

In this case, neither victim was able to identify the individuals who attacked them. Defendant's written confession, however, details the fact that one or more of the individuals he was with committed unarmed robbery. One or more of defendant's accomplices used force, violence, and fear in robbing the victims. Defendant stated that he "heard someone being hit, and I [defendant] turned away and ran out the house." One victim also testified that he was hit twice, once in the jaw and once near the ear. The other victim stated that she was picked up and thrown against the bedroom wall. Larceny occurred

since property was taken from the residence. There was no evidence that the individuals who robbed the victims were armed with a dangerous weapon. Therefore, in reviewing the evidence in a light most favorable to the prosecution, sufficient evidence was presented to find that unarmed robbery was committed by the perpetrators who entered the victims' home.

Neither defendant's confession nor any other evidence presented by the prosecution at trial showed that defendant was the principal in the unarmed robbery. However, an accomplice may be prosecuted as if he has committed the crime himself, MCL 767.39; MSA 28.979. In order "to support a finding that defendant aided and abetted a crime, the prosecution 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 Jones (On Rehearing)*, 201 Mich App 449, 451; 506 NW2d 542 (1993).

Defendant's confession is sufficient to establish that that he was an accomplice because he admitted that he aided and abetted the principals in the commission of the unarmed robbery. Defendant confessed to participating in the unarmed robbery. One of the other participants had earlier discussed committing the unarmed robbery. Defendant admitted to being present at the victims' home when the unarmed robbery took place. Defendant assisted the principals by going to the victims' house and entering it after two of his companions kicked the door in. If believed, this evidence would be sufficient for a rationale trier of fact to find defendant guilty of unarmed robbery as an aider and abettor.

Affirmed.

/s/ Richard Allen Griffin

/s/ David H. Sawyer

/s/ Peter D. O'Connell

¹ *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).