

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
July 10, 2014

v

MAURICE POCHE KIRK,  
Defendant-Appellant.

No. 314416  
Muskegon Circuit Court  
LC No. 12-061608-FC

---

Before: RONAYNE KRAUSE, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

Defendant, Maurice Poche Kirk, appeals as of right his conviction, following a jury trial, of armed robbery.<sup>1</sup> The trial court sentenced Kirk to serve 18 to 33 years' imprisonment, with no credit for time served. We affirm.

**I. FACTS**

**A. BACKGROUND FACTS**

Thertius Knight testified that he had known Kirk for about 20 years. According to Knight, on the morning of January 16, 2012, Kirk called to ask him for a telephone number and agreed to stop by later in the day.

According to Cameron Nelson, Kirk picked up him, Carlton Porter, Jermaine Brown, and "Ratchet."<sup>2</sup> While the men were driving to Knight's house, Kirk brought up the idea of robbing Knight. The men decided that they would not go through with the robbery if Kirk immediately came back outside, but they would proceed if Kirk stayed inside. Nelson testified that Ratchet gave a gun to Brown.

According to Knight, when he answered the door, he was surprised to see Nelson but he let both Kirk and Nelson into his home. He assumed that either Kirk or Nelson failed to close

---

<sup>1</sup> MCL 750.529.

<sup>2</sup> Ratchet's real name is not apparent from the transcripts.

the front door, because it would have otherwise locked automatically. He gave Kirk the phone number and they sat down to watch a basketball game on television.

Knight testified that, after a short time, his front door opened and Brown, Porter, and Ratchet walked in. He recognized Brown and Porter because he had seen them with Kirk the previous weekend. Brown put a gun to his head and demanded money. Kirk and Nelson stood up and walked out of the home. No one said anything to them as they left.

Kirk testified that Nelson came back in and joined the other men who were “rambling around.” After the men left, Knight discovered that he was missing various items, including phones, two Playstations, controllers, and about \$200. Knight called the police, who began looking for Kirk’s vehicle. Muskegon Police Department Detective Steve Waltz testified that officers found Kirk’s vehicle and followed it until he stopped in the middle of the road, abandoned it, ran behind a nearby house, and attempted to jump a fence. Detective Waltz testified that officers found a PlayStation, two cellular phones, and a PlayStation controller.

Kirk represented himself during trial. Kirk argued that he was merely present during the robbery. The jury found Kirk guilty of armed robbery.

## B. PROCEDURAL HISTORY

### 1. REQUEST FOR SELF-REPRESENTATION

At his arraignment in February 2012, Kirk asked the trial court to dismiss his court-appointed counsel, Joe Fisher. The trial court informed Kirk that another attorney, Fred Lesica, would likely be his trial counsel. Kirk requested that the trial court not appoint Lesica because he did not believe that Lesica would “fight for [him] 100% . . .,” and asked the trial court to instead appoint Brian Hosticka, another public defender. The trial court denied Kirk’s request.

In October 2012, defense counsel filed a motion on Kirk’s behalf, asking the trial court to grant Kirk’s motion for self-representation. On October 15, 2012, the trial court engaged in a lengthy discussion with Kirk about his rights and the process of self-representation. During the discussion, Kirk asked about hearsay and about how he could be convicted of armed robbery when the victim testified that he did not hold a weapon, threaten the victim, or do “any of those things period.” The trial court explained, with examples, how an aider or abettor could be guilty of armed robbery by acting in concert with the principal. It also explained hearsay rules and other policies.

At the end of its explanation, the trial court asked, “Do you understand all that?” Kirk responded, “Yes, I do.” After engaging in another lengthy discussion with Kirk about Kirk’s history, courtroom rules, and what he would need to do to prepare, the trial court again asked Kirk if he wanted to represent himself. Kirk responded, “Most definitely.” The trial court found that Kirk’s decision to represent himself was knowing, voluntary, understanding, and intelligent, and that “when [Kirk] said most definitely that’s about as unequivocal as it gets.”

The trial court asked Kirk whether he wanted to continue to represent himself at the beginning of each hearing, and Kirk responded affirmatively. During Kirk’s first sentencing

hearing, Kirk asked for appointed counsel. The trial court adjourned the sentencing hearing and appointed Hosticka to represent Kirk at sentencing.

## 2. THE ARREST WARRANT'S VALIDITY

A magistrate authorized Kirk's arrest warrant on January 18, 2012, two days after officers arrested Kirk. The complaint charged Kirk with armed robbery, and listed statutory citations and brief explanations. The complaint and warrant alleged that Kirk was involved in taking money and personal property from Knight and that, during the course of the robbery, Knight was threatened with a gun. The witness signed the complaint and swore to it before a magistrate. The magistrate found probable cause to believe that Kirk committed the offense and issued a warrant for his arrest.

Kirk's appointed counsel did not challenge the warrant at his arraignment, and Kirk did not challenge the warrant's validity during trial. In September 2013, eight months after sentencing, Kirk filed a motion challenging the warrant's validity. The trial court dismissed the motion because Kirk's appeal was already pending before this Court.

## 3. SENTENCING

Kirk's presentence investigation report indicated that, at the time of the offense, he was on parole for a federal crime and had a pending parole violation. The report mentions federal parole at least five times, and mentions once that Kirk was sentenced to "five years supervised release." The trial court asked Kirk and defense counsel if they had any additions or corrections to the report. Both responded that they did not. The trial court ultimately denied Kirk sentencing credits for time served on the basis that Kirk was on parole at the time that he committed the offense.

## II. SELF-REPRESENTATION

### A. STANDARD OF REVIEW

We review de novo whether a defendant has waived his Sixth Amendment right to be represented by counsel, but review for clear error the trial court's factual findings regarding a knowing and intelligent waiver.<sup>3</sup> We must indulge in every reasonable presumption against a defendant's waiver of his or her right to counsel.<sup>4</sup>

### B. LEGAL STANDARDS

The United States and Michigan Constitutions provide that an accused is entitled to counsel to assist in his or her defense.<sup>5</sup> The defendant has a constitutional right to be represented

---

<sup>3</sup> *People v Williams*, 470 Mich 634, 640; 683 NW2d 597 (2004).

<sup>4</sup> *Id.* at 641.

<sup>5</sup> US Const, Am 6; Const 1963, Art 1, § 20.

by counsel at all critical stages in a criminal proceeding.<sup>6</sup> But the defendant also has the right to represent him- or herself, and the trial court may not force a defendant to accept a lawyer.<sup>7</sup>

Before the trial court may grant a defendant's request for self-representation, it should engage in "a methodical assessment of the wisdom of self-representation by the defendant" before determining that the defendant's waiver is knowing, intelligent, and voluntary.<sup>8</sup> A defendant's waiver is effective when the trial court fully apprises the defendant of the risks of self-representation, and he or she knowingly and voluntarily accepts them.<sup>9</sup>

### C. APPLYING THE STANDARDS

Kirk contends that his waiver was not knowing, intelligent, voluntary, or unequivocal because the trial court did not ask whether he was actually requesting substitute counsel. We disagree.

Requests for self-representation and requests for substitute counsel are different proceedings, with different procedures and different implications. Regarding substitute counsel, an indigent defendant is not entitled to the attorney of his or her choice, or to have the trial court replace the originally appointed attorney on request.<sup>10</sup> The trial court may appoint substitute counsel on a showing of good cause, and when substitution will not unreasonably disrupt the judicial process.<sup>11</sup> Regarding waiving the right to counsel, the trial court must (1) determine whether the defendant's request is unequivocal; (2) ensure that the defendant's request is knowing, intelligent, and voluntary; (3) ensure that the defendant's self-representation will not disrupt, burden, or inconvenience the proceedings; and (4) advise the defendant of the charge, the maximum possible prison sentence, any mandatory minimum sentence, and the risks of self-representation.<sup>12</sup>

Here, Kirk asked for substitute counsel over six months before he asked to represent himself. At the time he asked to represent himself, the trial court engaged in a lengthy discussion with Kirk about his rights and the dangers of self-representation. After an admirably thorough discussion in which the trial court methodically advised Kirk of the dangers of self-representation, ascertained Kirk's level of education and willingness to prepare to represent himself, asked whether Kirk had any questions, discussed his concerns with him, and even

---

<sup>6</sup> *People v Adkins (After Remand)*, 452 Mich 702, 720; 551 NW2d 108 (1996).

<sup>7</sup> *Williams*, 470 Mich at 641; *Iowa v Tovar*, 541 US 77, 87-88; 124 S Ct 1379; 158 L Ed 2d 209 (2004).

<sup>8</sup> *People v Adkins (After Remand)*, 452 Mich 702, 721; 551 NW2d 108 (1996).

<sup>9</sup> *Williams*, 470 Mich at 645.

<sup>10</sup> *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001).

<sup>11</sup> *Id.*

<sup>12</sup> *Williams*, 470 Mich at 642-643.

explained to him concepts of law, the trial court asked Kirk whether he still wished to waive his right to counsel. Kirk responded, “Most definitely.”

None of Kirk’s questions, answers, or statements indicated that he actually wished to request substitute counsel. We can find no authority requiring the trial court to explore whether a defendant would like to request substitute counsel before granting his or her request for self-representation. Under these circumstances, we conclude that the trial court did not clearly err when it found that Kirk knowingly, intelligently, and voluntarily waived his right of representation, and that his request was unequivocal.

Kirk also contends that his waiver was not effective because Kirk did not understand the concept and application of aiding and abetting. We reject this assertion.

A defendant’s legal skills or technical legal knowledge is not relevant to whether he or she waived the right to be represented by counsel.<sup>13</sup> Even taking Kirk’s assertion as true, his ability to understand the legal theory of aiding and abetting is not relevant to whether his decision to represent himself was knowing, intelligent, and voluntary.

### III. SENTENCING CREDIT

#### A. STANDARD OF REVIEW AND ISSUE PRESERVATION

Generally, we review for clear error a trial court’s factual determinations during sentencing,<sup>14</sup> and review de novo issues of law.<sup>15</sup> But, to preserve an issue, the appellant must challenge it before the trial court on the same grounds as he challenges it on appeal.<sup>16</sup> Here, Kirk did not contend below that he was entitled to sentencing credits because he was on federal supervised release. Thus, this issue is not preserved.

This Court reviews unpreserved issues for plain error affecting a party’s substantial rights.<sup>17</sup> An error is plain if it is clear or obvious.<sup>18</sup> The error affected the defendant’s substantial rights if it affected the outcome of the lower court proceedings.<sup>19</sup>

---

<sup>13</sup> *Indiana v Edwards*, 554 US 164, 172; 128 S Ct 2379, 2384-2385; 171 L Ed 2d 345 (2008); *People v Anderson*, 398 Mich 361, 368; 247 NW2d 857 (1976).

<sup>14</sup> *People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013).

<sup>15</sup> See *People v Sexton*, 458 Mich 43, 52; 580 NW2d 404 (1998); *People v Parker*, 267 Mich App 319, 326; 704 NW2d 734 (2005).

<sup>16</sup> *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004); *People v Danto*, 294 Mich App 596, 605; 822 NW2d 600 (2011).

<sup>17</sup> *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); *Duray Dev, LLC v Perrin*, 288 Mich App 143, 150; 792 NW2d 749 (2010).

<sup>18</sup> *Carines*, 460 Mich at 763.

## B. LEGAL STANDARDS

MCL 769.11b instructs the trial court to give sentencing credits to those defendants who serve time in jail before sentencing “because of being denied or unable to furnish bond . . . .”<sup>20</sup> Outside of MCL 769.11b, a defendant does not have any right to sentencing credits.<sup>21</sup> The reason that a parole violator is not entitled to sentencing credits is because the defendant is not denied release on the basis of the defendant’s inability to furnish bond.<sup>22</sup> A defendant on federal supervised release is prohibited from committing state crimes.<sup>23</sup> A federal court reviewing a defendant’s violation of supervised release conditions must follow the Federal Rules of Criminal Procedure that apply to probation revocation proceedings.<sup>24</sup> A federal court may only release a person in custody who is accused of violating supervised release if the magistrate finds “by clear and convincing evidence that the person will not flee or pose a danger to any other person or to the community[.]”<sup>25</sup>

## C. APPLYING THE STANDARDS

Kirk contends that the trial court erroneously denied him sentencing credit because he was not actually on federal parole at the time that he was sentenced. Presuming, without deciding, that the trial court clearly erred when it found that Kirk was on parole rather than federal supervised release, we conclude that Kirk has not demonstrated plain error.

We reach this conclusion because any such error did not affect the outcome of Kirk’s proceedings. Kirk would not have been entitled to sentencing credits because of his federal supervised release status. A defendant is only entitled to sentencing credits if he or she is denied release *because of an inability to furnish bond*.<sup>26</sup> As noted above, a defendant who has violated his or her supervised release is not entitled to be released from custody. Here, even had the trial court determined that Kirk was on supervised release rather than federal parole, Kirk would not have been entitled to sentencing credits. Kirk was not denied release because he was unable to furnish bond: he was denied release because of his commission of another offense in combination with his supervised release. No authority provides that the trial court is required to grant a defendant sentencing credits when he or she is on supervised release, particularly when that defendant would otherwise be in custody pending a hearing on whether to revoke his or her supervised release.

---

<sup>19</sup> *Id.*

<sup>20</sup> MCL 769.11b.

<sup>21</sup> *People v*; 381 NW2d 646 (1985).

<sup>22</sup> See *People v Idziak*, 484 Mich 549, 578-579; 773 NW2d 616 (2009), quoting MCL 769.11b (concerning parole violators).

<sup>23</sup> 18 USC § 3583(d).

<sup>24</sup> 18 USC § 3583(e)(3); *United States v Morales*, 45 F2d 693, 697 (CA 2, 1995).

<sup>25</sup> FR Crim P 32.1(a)(6).

<sup>26</sup> See *Idziak*, 484 Mich at 578-579.

The situation is similar to that in *Prieskorn*, in which the defendant was denied sentencing credits because he committed a new offense while out on bond, rather than because he was unable to furnish bond.<sup>27</sup> Thus, even had the trial court determined that Kirk was on supervised release, the result of his proceeding would have been the same. We conclude that any error did not affect Kirk's substantial rights because it did not affect the outcome of his proceedings.

Kirk's argument regarding consecutive sentences is unpersuasive. In *Prieskorn*, the Michigan Supreme Court rejected a similar argument. In that case, the defendant was denied sentencing credit because he was arrested for a new offense while he was released on bond for an old offense.<sup>28</sup> He argued in part that granting him sentencing credit would be in accordance with Michigan's concurrent sentencing rule.<sup>29</sup> The Michigan Supreme Court rejected the argument, concluding that "[t]he concurrent sentencing rule is simply irrelevant to this case."<sup>30</sup> The Court reasoned, "Commencement of the sentencing in this case was not delayed until after the [new] sentence was concluded."<sup>31</sup>

Similarly, in this case, the trial court did not wait to commence Kirk's new sentence for armed robbery until after his possible federal sentence for violating supervised release concluded. The trial court commenced Kirk's sentence on the date of sentencing. The trial court thus did not plainly or obviously violate Michigan's concurrent sentencing rule.

For these reasons, we conclude that any error was not plain.

#### IV. KIRK'S ADDITIONAL ISSUES

Kirk raises several additional issues in his pro per supplemental brief, filed pursuant to Supreme Court Administrative Order No. 2004-6, Standard 4.

##### A. INSUFFICIENT WARRANT AND COMPLAINT

###### 1. STANDARD OF REVIEW

Generally, courts review a magistrate's decision to issue a warrant to determine whether a reasonable person could "conclude[] that there was a 'substantial basis' for the finding of

---

<sup>27</sup> See *Prieskorn*, 424 Mich at 341-342 (the defendant is not entitled to sentencing credits for a hold or detainer that is unrelated to the new offense for which the defendant is waiting to be sentenced).

<sup>28</sup> *Id.* at 331.

<sup>29</sup> *Id.* at 342.

<sup>30</sup> *Id.* at 342.

<sup>31</sup> *Id.* at 342-343.

probable cause.”<sup>32</sup> We must read the warrant and the underlying affidavit “in a common-sense and realistic manner,” and must afford deference to the magistrate’s decision.<sup>33</sup>

But a defendant must preserve an alleged error by raising it before the trial court when the trial court has the opportunity to correct its error.<sup>34</sup> Here, Kirk did not raise his issues regarding the warrant and complaint until eight months after his sentencing hearing. At that point, the trial court did not have the opportunity to correct its error because Kirk’s appeal was pending before this Court. We conclude that this issue is unpreserved.

We review unpreserved issues for plain error affecting a party’s substantial rights.<sup>35</sup> An error is plain if it is clear or obvious, and the error affected the defendant’s substantial rights if it affected the outcome of the lower court proceedings.<sup>36</sup>

## 2. LEGAL STANDARDS

Generally, a signed complaint and warrant form the basis for the information, which begins criminal proceedings.<sup>37</sup> The purpose of the complaint is to allow the magistrate to determine whether to issue a warrant.<sup>38</sup> A magistrate must issue a warrant when he or she finds reasonable cause to believe the individual named in the complaint committed the offense.<sup>39</sup> The magistrate may base his or her probable-cause determination on the complaint itself, an affidavit, or sworn testimony:

The finding of reasonable cause by the magistrate may be based upon 1 or more of the following:

- (a) Factual allegations of the complainant contained in the complaint.
- (b) The complainant’s sworn testimony.
- (c) The complainant’s affidavit.

---

<sup>32</sup> *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992).

<sup>33</sup> *Id.* at 604.

<sup>34</sup> *People v Pipes*, 475 Mich 267, 277; 715 NW2d 290 (2006).

<sup>35</sup> *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

<sup>36</sup> *Id.*

<sup>37</sup> *People v Glass (After Remand)*, 464 Mich 266, 277; 627 NW2d 261 (2001).

<sup>38</sup> MCL 764.1a(1); *People v Higuera*, 244 Mich App 429, 443; 625 NW2d 444 (2001)

<sup>39</sup> MCL 764.1a(1).

(d) Any supplemental sworn testimony or affidavits of other individuals presented by the complainant or required by the magistrate.<sup>[40]</sup>

A magistrate may base a probable cause determination on hearsay.<sup>41</sup>

### 3. APPLYING THE STANDARDS

Kirk asserts that the trial court never obtained subject matter jurisdiction over the case because his arrest warrant was based on an unconstitutional complaint that contained conclusory language, and the magistrate improperly authorized the warrant without probable cause or a hearing. We disagree with Kirk's assertions. Kirk premises his assertions on several misapprehensions of law.

First, Kirk contends that MCR 2.201(B) applies to criminal actions and requires the victim to bring the criminal action and sign the complaint. Kirk is incorrect.

MCR 2.201 is a rule of civil procedure.<sup>42</sup> The rules of civil procedure do not apply in criminal actions "when it clearly appears that they apply to civil actions only[.]"<sup>43</sup> MCR 2.201(A) states that "[t]he party who commences a *civil action* is designated as plaintiff and the adverse party as defendant." MCR 2.201(B) then provides who may bring suits in specified types of civil actions.<sup>44</sup> Thus, we conclude that MCR 2.201(B) is a rule of civil procedure that clearly applies to civil actions only, and does not apply in this case. Accordingly, the complaint was not deficient for failing to comply with MCR 2.201(B).

Second, our review of the complaint reveals that it contains all the necessary elements of a criminal complaint. Specifically, the complaining witness alleged that Kirk was involved in the armed robbery of Knight, that a gun was held to Knight's head during the robbery, and that officers found items that were reported stolen from Knight's home in Kirk's vehicle shortly after the robbery. The complaining witness signed the complaint. Neither statute nor court rule requires the complainant to be the victim. Further, the complaint is an accusation,<sup>45</sup> and neither statute nor court rule precludes the complaint from containing conclusory language.

After reading the warrant and the underlying affidavit "in a common-sense and realistic manner," we conclude that the magistrate did not err when he found that the complaint provided probable cause to issue an arrest warrant. We conclude that neither the complaint nor the

---

<sup>40</sup> MCL 764.1a(2).

<sup>41</sup> MCR 6.102(B). See *Jaben v United States*, 381 US 214, 224; 85 S Ct 1365; 14 L Ed 2d 345 (1965) (a complaint's factual allegations need not be independently documented).

<sup>42</sup> MCR 2.201(B).

<sup>43</sup> MCR 6.001(D)(2).

<sup>44</sup> See MCR 2.201(B).

<sup>45</sup> See MCR 6.101(A).

warrant were invalid. Accordingly, we reject Kirk's various assertions regarding the deficiency of the complaint and arrest warrant. Additionally, we note that even were we to accept Kirk's assertions, the trial court still had jurisdiction to try his case.<sup>46</sup>

Third, Kirk contends that the complaint was not sufficient because the record regarding the warrant was not adequately preserved. We disagree.

MCR 6.102(B) allows the magistrate to rely on "the testimony of a sworn witness adequately preserved to permit review" to support a probable cause determination. But the magistrate may also rely on other sources.<sup>47</sup> Here, there is no indication that the magistrate relied on oral testimony. Further, for the reasons described above, the factual allegations in the signed complaint itself were sufficient to support the magistrate's probable cause determination. We therefore reject this argument.

Because Kirk's assertions regarding the sufficiency of the complaint and the warrant for his arrest are meritless, we also reject Kirk's assertions that counsel was ineffective for failing to challenge the complaint and warrant. Counsel is not ineffective for making futile challenges.<sup>48</sup> Because the complaint and warrant were sufficient, Kirk's counsel was not ineffective for failing to make a futile challenge.

## B. SUFFICIENCY OF THE INFORMATION

### 1. STANDARD OF REVIEW

Generally, this Court reviews for an abuse of discretion the trial court's ultimate decision on a motion to quash an information.<sup>49</sup> We review de novo questions of law.<sup>50</sup>

### 2. LEGAL STANDARDS

At a preliminary examination, the prosecutor must present evidence from which the magistrate may infer that the defendant has committed each element of the charged crime.<sup>51</sup> If

---

<sup>46</sup> See *People v Burrill*, 391 Mich 124, 133; 214 NW2d 823 (1974) (the trial court may try a defendant even if the defendant's arrest was illegal); *In re Oliver*, 333 US 257, 273; 68 S Ct 499; 92 L Ed 682 (1948) (same).

<sup>47</sup> MCR 6.102(B).

<sup>48</sup> *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

<sup>49</sup> *People v Waterstone*, 296 Mich App 121, 131; 818 NW2d 432 (2012).

<sup>50</sup> *People v Lemons*, 299 Mich App 541, 545; 830 NW2d 794 (2013).

<sup>51</sup> *People v Yost*, 468 Mich 122, 125-126; 659 NW2d 604 (2003); *People v Hudson*, 241 Mich App 268, 278; 615 NW2d 784 (2000).

the magistrate determines that such evidence exists, the magistrate must bind the defendant over for trial before the circuit court.<sup>52</sup>

A person who helps another commit a crime is just as guilty of the crime as the person who directly committed it:

Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense.<sup>[53]</sup>

Thus, “to convict a defendant of aiding and abetting a crime, a prosecutor must establish 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 that the defendant gave aid and encouragement.”<sup>54</sup>

The elements of armed robbery are that (1) the defendant assaulted the victim, used force or violence against the victim, or placed the victim in fear, (2) while committing a larceny, (3) the victim was present during the larceny, and (4) the defendant possessed a dangerous weapon.<sup>55</sup> A person commits a larceny when he or she takes and moves someone else’s property with the intent to permanently take it away from the person.<sup>56</sup> A gun is a dangerous weapon.<sup>57</sup>

### 3. APPLYING THE STANDARDS

Kirk contends that the trial court erred when it failed to quash the information because, at the preliminary hearing, the prosecutor did not prove that Kirk committed the elements of armed robbery. We disagree.

Knight testified at the preliminary examination. According to Knight, Kirk came to his house on January 16, 2012, to get a telephone number. Knight let Kirk and Nelson in through the front door. Knight believed that Kirk left the front door slightly opened after he entered. A few minutes later, three people entered. Knight recognized two of them as Kirk’s friends. One person put a gun to Knight’s head, asked him where the money was, and threatened to shoot him.

---

<sup>52</sup> MCL 766.13; *Yost*, 468 Mich at 125-126.

<sup>53</sup> MCL 767.39.

<sup>54</sup> *People v Moore*, 470 Mich 56, 67-68; 679 NW2d 41 (2004) (quotation marks, citation, and brackets omitted, emphasis added).

<sup>55</sup> MCL 750.529; *People v Williams*, 288 Mich App 67, 76-77; 792 NW2d 384 (2010), *aff’d* 491 Mich 164 (2012).

<sup>56</sup> *Williams*, 288 Mich App at 76.

<sup>57</sup> *People v Jolly*, 442 Mich 458, 468; 502 NW2d 177 (1993).

Kirk and Nelson rose, walked past the three men, and left. No one said anything to them as they left. Nelson returned and helped the men take his property, before all the men left.

The trial court determined that Knight's testimony established that a robbery happened and that Kirk aided and abetted it. The trial court reasoned that Kirk knew the robbers and that his behavior during the robbery was "quite curious for somebody who is ostensibly surprised when armed robbers show up." The trial court determined that Kirk "verified the coast was clear" and "left the door a little bit open."

On the basis of Knight's testimony, the court could reasonably infer that someone else committed a robbery. Knight testified that three people entered his home, one held a gun to his head, and the others took his property. Thus, the prosecutor established that "the crime charged . . . was committed by some other person" because other people assaulted Knight while armed with a dangerous weapon, and they took his property while he was present. Knight also testified that he thought that Kirk left the front door open. Therefore, the testimony established the inference that Kirk "performed acts . . . that assisted the commission of the crime." Finally, Knight testified that after the robbers entered, Kirk got up and left the room without confrontation. Therefore, Knight's testimony about Kirk's behavior established the inference that Kirk knew that the three others intended to commit the crime when he assisted them.

We conclude that the trial court did not abuse its discretion when it denied Kirk's motion to quash the information. Because the prosecutor was proceeding under an aiding and abetting theory, the prosecutor did not need to establish that Kirk personally held a gun to Knight's head or was present when the others robbed Knight. The prosecutor only needed to show that Kirk assisted someone else in robbing Knight, with the knowledge that the other person would do so.

## V. CONCLUSIONS

We conclude that the trial court did not err by finding that Kirk knowingly, intelligently, and voluntarily waived his right to the assistance of counsel. We conclude that the trial court did not plainly err when it failed to give Kirk credit for time served before sentencing. We conclude that the trial court did not lack jurisdiction to try Kirk, and that his complaint and warrant were sufficient. Finally, we conclude that the trial court did not err when it failed to quash information in this case.

We affirm.

/s/ Amy Ronayne Krause

/s/ Joel P. Hoekstra

/s/ William C. Whitbeck