

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALEXIS LYNN WARREN,

Defendant-Appellant.

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UNPUBLISHED

June 16, 2009

No. 285029

Wayne Circuit Court

LC No. 07-020344-FH

Before: O’Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right her bench trial convictions of two counts of aiding and abetting felonious assault, MCL 750.82. Because defendant received the effective assistance of counsel at trial and because the prosecutor presented sufficient evidence to convict defendant, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant’s convictions stem from the words and actions in which she engaged during Dominique Lambert’s felonious assault of two of defendant’s neighbors, Shaleena Powell and Powell’s mother, Sharon Eldridge, with a steel baseball bat. Defendant argues she could not possibly have aided or abetted the specific crime of felonious assault because she did not know assault was Lambert’s intention. The trial court disagreed, and the facts support the trial court’s decision. Defendant also contends on appeal, but did not raise in the trial court, that her joint representation with Lambert deprived her of the constitutional right to the effective assistance of counsel.

Claims of insufficient evidence are reviewed by this Court de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When reviewing a challenge to the sufficiency of the evidence, the Court views the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

Aiding and abetting is any type of assistance given the perpetrator of a crime by word or deed intended to encourage, support, or incite commission of that crime, and the one aiding or abetting may be convicted and punished as if she directly committed the offense. MCL 767.39; *People v Plunkett*, 281 Mich App 721, 730; 760 NW2d 850 (2008). To establish guilt under an

aiding and abetting theory, a prosecutor must show that the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time she gave aid and encouragement. *People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006). An aider and abettor's state of mind may be inferred from the facts and circumstances, and factors that may be considered include a 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. *People v Turner*, 213 Mich App 558, 568-569; 540 NW2d 728 (1995), overruled in part on other grounds *People v Mass*, 464 Mich 615; 628 NW2d 540 (2001).

Felonious assault is defined in MCL 750.82 as assault of another person "with a gun, revolver, pistol, knife, iron bar, club, brass knuckles, or other dangerous weapon without intending to commit murder or to inflict great bodily harm less than murder . . ." The evidence showed defendant's participation in the incident consisted of jumping up and identifying Powell to Lambert, who was in possession of a bat, clapping her hands and stating, "Yeah. This is how Detroit do it," or "I'm gonna show you how Detroit do it," ratifying Lambert's act by sheltering Lambert in her home and blocking a police officer when he attempted to question Lambert, and stating to Powell sometime after the incident "[O]h, ya'll bitches thought it was over." In addition to these facts, the surrounding circumstances showed there was bad blood between defendant and Powell: (1) Officer Benjamin Johnson knew the parties from prior contact; (2) something had happened earlier in the day on September 27, 2008, prompting defendant to consider filing a police report for which Lambert was going to pick her up and drive her to the police station; (3) defendant and Lambert were closely related; (4) Lambert did not know Powell until defendant identified her, and Lambert indicated by asking "[I]s that one of them bitches" or "[W]here them bitches at" that she and defendant had discussed Powell earlier; (5) Lambert did not raise as a defense that she was planning to play baseball; and (6) Lambert indicated she acted against Powell on defendant's behalf when she confronted Eldridge with "who the f--k f--k with my cousin" and "[Y]ou better get those bitches under control. [Y]ou don't know me. I'll kill them bitches."

The evidence, viewed in a light most favorable to the prosecution, clearly supported the trial court's finding that a factor underlying Lambert's assault was defendant's poor relationship with Powell, that Lambert would not have known whom to assault had defendant not identified Powell, and that defendant intended, incited, and encouraged Lambert to chase and threaten Powell and Eldridge with great bodily harm with the steel bat. Sufficient evidence was presented to convict defendant of aiding and abetting felonious assault, MCL 750.82.

Defendant next argues that defense counsel's joint representation of both she and Lambert created a conflict of interest that adversely impacted counsel's performance and constituted ineffective assistance of counsel. Defendant did not preserve this issue by raising it in the trial court. However, a claim of ineffective assistance of counsel may be raised for the first time on appeal if the details relating to the alleged ineffective assistance of counsel are sufficiently contained in the record to permit this Court to decide the issue. *People v Cicotte*, 133 Mich App 630, 636; 349 NW2d 167 (1984). Since defendant did not request an evidentiary hearing in the trial court, this Court's review is limited to the existing record. *People v Wilson*, 196 Mich App 604, 612; 493 NW2d 471 (1992).

To demonstrate ineffective assistance of counsel, it must be shown that an attorney's performance fell below an objective standard of reasonableness and that the deficient

representation so prejudiced the defendant that he was denied a fair trial. *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994). See also *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). The Sixth Amendment right to counsel encompasses the right to have an attorney that is not “burdened by an actual conflict of interest.” *Id.* at 692. When a claim of ineffective assistance of counsel involves an assertion of the existence of a conflict of interest, a defendant must demonstrate that an actual, not a presumed or implied, conflict of interest negatively impacted his attorney’s performance. *People v Smith*, 456 Mich 543, 556-557; 581 NW2d 654 (1998). To demonstrate an actual conflict of interest, a defendant must prove “that counsel ‘actively represented conflicting interests’ and that ‘an actual conflict of interest adversely affected his lawyer’s performance.’” *Id.* at 557, quoting *Cuyler v Sullivan*, 446 US 335, 348-350; 110 S Ct 1708; 64 L Ed 2d 333 (1980). Prejudice is presumed if an actual conflict of interest adversely impacts the sufficiency of an attorney’s performance. *Smith, supra* at 556-557.

Defendant asserts that defense counsel failed to set forth defendant’s best defense, which was that Lambert acted completely alone in committing felonious assault and defendant could not have known what Lambert intended. Instead, counsel pursued the less credible argument that Lambert did not commit the underlying offenses. However, the record showed that at the preliminary examination, in a motion to quash the information, and at trial, defense counsel advanced, albeit unsuccessfully, the very argument that defendant in her appellate brief argues should have been advanced, i.e., that Lambert acted alone and defendant could not have known what Lambert intended. Defendant’s defense would have been the same regardless of whether counsel argued that Lambert did or did not commit the offenses. Defendant’s defense would also have been the same whether she was separately or jointly represented. Defendant did not show that counsel’s handling of any particular aspects of the trial or her defense were likely affected or prejudiced because of the joint representation. Counsel’s representation was not adversely impacted and not rendered ineffective. Defendant received the effective assistance of counsel.

Affirmed.

/s/ Peter D. O’Connell  
/s/ Richard A. Bandstra  
/s/ Pat M. Donofrio