

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES LAWRENCE QUINNEY,

Defendant-Appellant.

UNPUBLISHED

May 28, 2013

No. 308407

Wayne Circuit Court

LC No. 11-005434-FH

Before: DONOFRIO, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions of first-degree home invasion, MCL 750.110a(2), assault with a dangerous weapon (felonious assault), MCL 750.82, interfering with a crime report, MCL 750.483a(2)(b), and assault and battery, MCL 750.81. Defendant was sentenced, as a fourth habitual offender, MCL 769.12, to 25 to 50 years' imprisonment for the home invasion conviction. We affirm but remand for sentencing on the felonious assault, interfering with a crime report, and assault and battery convictions.¹

Defendant first argues that he was deprived of a fair trial because the trial court admitted evidence of an improper identification procedure. Specifically, defendant argues that the police should not have conducted a photographic lineup because he was in custody and available for a corporeal lineup, and therefore, the evidence from the photographic identification procedure should have been suppressed. We disagree.

While reviewing the trial court's conclusions of law and ultimate decision on a motion to suppress evidence de novo, this Court reviews the trial court's factual findings for clear error. *People v Garvin*, 235 Mich App 90, 96; 597 NW2d 194 (1999). But a trial court's decision to admit identification evidence will not be reversed unless it is clearly erroneous. *People v Kurylczyk*, 443 Mich 289, 303; 505 NW2d 528 (1993). "Clear error exists when the reviewing court is left with the definite and firm conviction that a mistake has been made." *Id.*

¹ Because the trial court only sentenced defendant for his home invasion conviction, we remand for sentencing on the other convictions.

Generally, photographic identification procedures should not be used when a defendant is in custody. *Id.* at 298. Certain circumstances, however, provide legitimate reasons to use a photographic lineup instead of a corporeal lineup, such as, “where the nature of the case requires immediate identification,” or “where there are insufficient numbers of persons available with the defendant’s physical characteristics,” *People v Currelley*, 99 Mich App 561, 564 n 1; 297 NW2d 924 (1980).

At the evidentiary hearing, Detroit Police Sergeant Manny Gutierrez testified that a photographic lineup was used because there were “no individuals in the facilities” that they could use for a corporeal lineup “that would at least be comparable to Mr. Quinney.” Detroit Officer Terry Cross-Nelson testified that he called three precincts in his search for persons to participate in a corporeal lineup. Officer Cross-Nelson looked for persons that shared common physical characteristics with defendant, including weight, height, and age, but was unable to find a sample of prisoners to place in a corporeal lineup with defendant. Officer Cross-Nelson and Sergeant Gutierrez also testified that they were working under certain time restraints during that investigation. According to both officers, the Department of Justice mandates that the Detroit Police Department process prisoners within 48 hours of arrest. And as the trial court noted, arraignments do not occur at all times during the day or week, which placed greater temporal limitations on the investigation. Given these circumstances, legitimate reasons existed to use a photographic lineup. The police made reasonable efforts to arrange a proper corporeal lineup but there were insufficient similar persons available that matched defendant’s description. Accordingly, the trial court did not clearly err by admitting evidence of the photographic lineup.

Defendant next argues that there was insufficient evidence to sustain his convictions of felonious assault and interfering with a crime report as an aider and abettor. We disagree.

This Court reviews de novo a sufficiency of the evidence challenge. *People v Harrison*, 283 Mich App 374, 377; 768 NW2d 98 (2009). There is sufficient evidence to sustain a conviction, if after reviewing the evidence in a light most favorable to the prosecution, it is determined that a rational trier of fact could have found that the elements of the crime were proven beyond a reasonable doubt. *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010). Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The credibility of witnesses and the weight to accord to evidence are for the jury to determine; we resolve any conflicts in the evidence in favor of the jury’s verdict. *Id.*; *Harrison*, 283 Mich App at 378.

“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.” MCL 767.39. “The phrase ‘aids or abets’ is used to describe any type of assistance given to the perpetrator of a crime by words or deeds that are intended to encourage, support, or incite the commission of that crime.” *People v Moore*, 470 Mich 56, 63; 679 NW2d 41 (2004). But for criminal liability under this theory, a defendant must “possess the criminal intent to aid, abet, procure, or counsel the commission of an offense.” *People v Robinson*, 475 Mich 1, 15; 715 NW2d 44 (2006). As explained by our Supreme Court:

[a] defendant is criminally liable for the offenses the defendant specifically intends to aid or abet, or has knowledge of, as well as those crimes that are the natural and probable consequences of the offense he intends to aid or abet. Therefore, the prosecutor must prove beyond a reasonable doubt that the defendant aided or abetted the commission of an offense and that the defendant intended to aid the charged offense, knew the principal intended to commit the charged offense, or, alternatively, that the charged offense was a natural and probable consequence of the commission of the intended offense. [*Id.*]

“An aider and abetter’s knowledge of the principal’s intent can be inferred from the facts and circumstances surrounding an event.” *People v Bennett*, 290 Mich App 465, 474; 802 NW2d 627 (2010). Mere presence, however, “even with knowledge that an offense is about to be committed or is being committed, is insufficient to show that a person is an aider and abettor.” *People v Wilson*, 196 Mich App 604, 614; 493 NW2d 471 (1992).

To sustain a felonious assault conviction, the prosecution must prove beyond a reasonable doubt that there was: “(1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery.” *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). To establish that a defendant is guilty of interfering with a crime report, the prosecution must prove beyond a reasonable doubt that: “(1) that a defendant prevented or attempted to prevent, (2) through the unlawful use of physical force, (3) someone from reporting a crime committed or attempted by another person.” *People v Holley*, 480 Mich 222, 228; 747 NW2d 856 (2008); MCL 750.483a(2)(b).

Immediately upon entering the apartment, defendant focused his attention on locating a hidden envelope of money placed in the living room while defendant’s accomplice disabled the intercom and then struck the male complainant with the intercom. Meanwhile, defendant located the money and hit the female complainant after she attempted to stop defendant from taking the money. The accomplice then stabbed the male complainant in the chest with a small knife. After securing the money, defendant and his accomplice quickly exited the apartment.

A rational trier of fact could infer from these circumstances that defendant intended to support, encourage, or incite his accomplice’s actions before and after disabling the intercom. Given the deliberate and swift manner in which defendant and his accomplice entered and executed the theft, it is reasonable to conclude that the assailants had a preconceived plan; defendant would locate the money while the unidentified accomplice would disable the intercom, which would prevent the residents from reporting the theft. By focusing his attention on locating the money, defendant provided his accomplice with the opportunity to disable the intercom. Further, the trier of fact could have also reasonably inferred from the evidence that defendant provided his accomplice with information about the intercom system before they entered the apartment, as defendant was familiar with the apartment building and its units. On several occasions before the incident, defendant visited the apartment building, and it would be reasonable to conclude from that evidence that defendant learned about the intercom system during those visits. Therefore, there was sufficient evidence to find that defendant was guilty of interfering with a crime report as an aider and abettor.

Additionally, because a rational trier of fact could conclude that the use of force or a dangerous weapon was a natural and probable consequence of the commission of a home invasion, there was sufficient evidence to find defendant guilty of felonious assault as an aider and abettor. Accordingly, when the evidence is viewed in a light most favorable to the prosecution, there was sufficient evidence for a rational trier of fact to conclude that defendant was guilty of felonious assault and interfering with a crime report as an aider and abettor.

We affirm but remanded for sentencing on defendant's convictions of felonious assault, interfering with a crime report and assault and battery. We do not retain jurisdiction.

/s/ Pat M. Donofrio

/s/ Jane E. Markey

/s/ Donald S. Owens