

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
March 17, 2015

v

PAUL HOGAN,

No. 321214  
Wayne Circuit Court  
LC No. 13-009988-FC

Defendant-Appellant.

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Before: DONOFRIO, P.J., and RIORDAN and GADOLA, JJ.

PER CURIAM.

Defendant was convicted of carjacking, MCL 750.529a, under an aiding and abetting theory following a bench trial.<sup>1</sup> The trial court sentenced defendant to 10 to 25 years' imprisonment, with 157 days' jail credit. Defendant appeals as of right, and we affirm.

On October 20, 2013, Jinni Terry arrived at a gas station in Detroit, Michigan. As soon as she exited her car, defendant and Steven Heard approached her and asked if they could pump her gas. Terry informed the men that she was not getting gas, and proceeded to enter the gas station to make a purchase. As Terry exited and walked away from the gas station, she saw defendant standing by the gas station door, and saw Heard standing near her car by the gas pump. Terry testified that as she approached her car, she stopped walking because she was afraid. Heard then pulled out a gun, stated, "Don't run, don't move, don't scream," and demanded Terry's keys. Terry refused and began running toward the gas station with Heard in pursuit. Terry testified that as she opened the gas station door, she felt defendant grab her arm, but she was able to break free and enter the building. Once inside the gas station, Terry saw defendant and Heard running together from the scene.

On appeal, defendant contends that there was insufficient evidence to support his carjacking conviction. We review challenges to the sufficiency of the evidence in a bench trial de novo. *People v Kanaan*, 278 Mich App 594, 618; 751 NW2d 57 (2008). When reviewing challenges to the sufficiency of the evidence, we "must view the evidence in a light most

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<sup>1</sup> The trial court acquitted defendant on charges of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b.

favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.” *Id.* Moreover, in reviewing such a challenge, courts may draw reasonable inferences from circumstantial evidence to establish proof of the elements of a crime, and must resolve all conflicting evidence in favor of the prosecution. *Id.* at 619.

Defendant first argues that he cannot be guilty of carjacking under an aiding and abetting theory because the victim did not relinquish control of her vehicle, so no carjacking occurred. We disagree. MCL 750.529a(1) provides the following:

A person who in the course of committing a larceny of a motor vehicle uses force or violence or the threat of force or violence, or who puts in fear any operator, passenger, or person in lawful possession of the motor vehicle, or any person lawfully attempting to recover the motor vehicle, is guilty of carjacking[.]

Although the former carjacking statute only applied to a defendant who “robs, steals, or takes a motor vehicle,”<sup>2</sup> in 2004 the Legislature amended former MCL 750.529a(1) and removed the statutory element requiring a completed larceny. In its place, the Legislature added a clause that requires proof that a defendant was “in the course of committing a larceny of a motor vehicle” in order to establish a carjacking. The current version of MCL 750.529a defines the scope of the statutory phrase “in the course of committing a larceny of a motor vehicle” to include “acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the motor vehicle.” MCL 750.529a(2). Accordingly, defendant’s argument that no carjacking occurred because the victim maintained control of her vehicle lacks merit because “under MCL 750.529a as amended, a carjacking conviction does not require a completed larceny.” *People v Cain*, 299 Mich App 27, 44; 829 NW2d 37 (2012), *aff’d in part*, vacated in part on other grounds 495 Mich 874 (2013).

In this case, Heard committed carjacking because he demanded the victim’s keys while the victim was present and in lawful possession of her vehicle, and he threatened force against the victim by brandishing a gun, which put the victim in fear. The only question remaining, then, is whether defendant was properly convicted of carjacking under a theory of aiding and abetting. We conclude that he was.

The elements of aiding and abetting are as follows:

(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 Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (citation and quotation marks omitted).]

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<sup>2</sup> MCL 750.529a(1), as amended by 2004 PA 128.

Mere presence at the scene of a crime is insufficient to establish that a defendant was an aider or abettor. *People v Norris*, 236 Mich App 411, 419-420; 600 NW2d 658 (1999). “In determining whether a defendant assisted in the commission of the crime, the amount of advice, aid, or encouragement is not material if it had the effect of inducing the commission of the crime.” *People v Moore*, 470 Mich 56, 71; 679 NW2d 41 (2004).

Viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence to convict defendant of carjacking under a theory of aiding and abetting. Defendant and Heard approached the victim together and each asked to pump her gas. When the victim refused their offers and entered the gas station, defendant stood at the door of the gas station where he could act as a lookout and prevent the victim from fleeing. Terry testified that after she exited the building and saw Heard produce a gun, defendant grabbed her arm as she tried to retreat back into the gas station. Defendant and Heard then fled the scene together. The evidence clearly establishes that defendant assisted in the commission of the crime, given that he approached the victim with Heard, stood by the door while the victim entered the gas station, grabbed the victim’s arm as she tried to retreat from Heard, and fled the scene with Heard.

Defendant contends that even if his actions inadvertently assisted Heard’s criminal behavior, there was insufficient evidence demonstrating that he intended the commission of the crime, or had knowledge that Heard intended to commit the crime. An aider or abettor’s knowledge or intent may be inferred from circumstantial evidence. *People v Wilson*, 196 Mich App 604, 614; 493 NW2d 471 (1992). “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.” *Carines*, 460 Mich at 757-758 (citation and quotation marks omitted). Circumstantial evidence supports the lower court’s conclusion that defendant intended the commission of the crime or knew Heard intended to commit the crime at the time he provided assistance.

Defendant argues that the evidence was insufficient to demonstrate his criminal intent to commit carjacking because the trial court acquitted him on charges of armed robbery and felony-firearm due to its conclusion that there was insufficient evidence showing defendant knew Heard had a gun. However, the crime of carjacking does not require use of a weapon, and circumstantial evidence supports that defendant was aware Heard would use force or violence, or the threat of force or violence, to put the victim in fear and commit a larceny. Accordingly, there is no inconsistency in the trial court’s verdict, and there was sufficient evidence to support defendant’s carjacking conviction under a theory of aiding and abetting.

Affirmed.

/s/ Pat M. Donofrio  
/s/ Michael J. Riordan  
/s/ Michael F. Gadola