

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LORENZO ORLANDO SHAFFER,

Defendant-Appellant.

UNPUBLISHED

February 17, 2005

No. 252848

Wayne Circuit Court

LC No. 03-009942-01

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY JEROME ANDERSON,

Defendant-Appellant.

No. 253124

Wayne Circuit Court

LC No. 03-009943-01

Before: Kelly, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Defendants Lorenzo Shaffer and Anthony Anderson were tried jointly, before separate juries. A jury convicted Shaffer of assault with intent to commit murder,¹ armed robbery,² assault with intent to rob while armed,³ and possession of a firearm during the commission of a felony (“felony-firearm”).⁴ A jury convicted Anderson of accessory after the fact,⁵ armed robbery, and assault with intent to rob while armed. The trial court sentenced Shaffer to

¹ MCL 750.83.

² MCL 750.529.

³ MCL 750.89.

⁴ MCL 750.227b.

⁵ MCL 750.505.

concurrent prison terms of 180 to 360 months each for the assault with intent to commit murder, armed robbery, and assault with intent to rob while armed convictions, and a consecutive two-year term for the felony-firearm conviction. The trial court sentenced Anderson to concurrent prison terms of forty to sixty months for the accessory after the fact conviction, and 135 to 360 months each for the armed robbery and assault with intent to rob while armed convictions. Defendants appeal their convictions and sentences, and we affirm.

I. FACTUAL BACKGROUND

Defendants' convictions arise from allegations that, on August 1, 2003, they set out to commit an armed robbery and, at approximately 1:15 p.m., Shaffer robbed complainant Yvonne Jernigan and assaulted and shot complainant Willie McGee at a local gas station, with the assistance of defendant Anderson. At trial, Jernigan testified that she was certain that defendant Shaffer was the person who robbed her and shot McGee. A witness who was familiar with both defendants from her neighborhood testified that she observed defendants fleeing the crime scene, and that Shaffer was carrying a gun.

II. DEFENDANT SHAFFER'S ISSUES IN DOCKET NO. 252848

A. Admission of Evidence

Shaffer argues that the trial court abused its discretion by admitting a hearsay statement made by a witness as a prior consistent statement. We review the trial court's decision to admit evidence for an abuse of discretion. *People v Watson*, 245 Mich App 572, 575; 629 NW2d 411 (2001). We will not reverse on the basis of an evidentiary error unless the court's ruling affected a party's substantial rights. MRE 103(a). Hearsay is inadmissible at trial unless there is a specific exception allowing its introduction. See MRE 801, MRE 802, and *People v Ivers*, 459 Mich 320, 331; 587 NW2d 10 (1998).

At trial, the prosecution presented evidence that defendants fled the crime scene together. A fifteen-year-old witness testified that, when defendants ran past her, Shaffer was carrying a gun. She acknowledged that at the preliminary examination she stated that Anderson was the person carrying a gun. At trial, she claimed that she accused Anderson of carrying the gun because Shaffer's family was in the courtroom and she was frightened and nervous. She maintained that she was certain that Shaffer had the gun, and that she never saw Anderson carrying a gun. The witness testified that she told her mother and the police what she observed. Thereafter, the prosecutor called the witness's mother, who testified that she questioned her daughter after arriving home and seeing the police. She testified that her daughter replied that she saw the defendants running, and saw a gun slip out of Shaffer's shorts.

We find merit to Shaffer's claim that the witness's statement to her mother did not qualify as a prior consistent statement admissible under MRE 801(d)(1)(B), because it was offered not to rebut an express or implied charge of recent fabrication or improper influence or motive, but to rehabilitate the witness in the face of her admitted prior testimony identifying Anderson as the person who was carrying the gun. However, a preserved nonconstitutional error is not grounds for reversal unless it is more probable than not that the error was outcome determinative. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). The defendant bears the burden of demonstrating that such an error resulted in a miscarriage of justice. *Id.*

Because there was substantial other unchallenged evidence against Shaffer, it is highly improbable that the outcome would have been different had the trial court precluded the challenged testimony. In addition to Jernigan's identification of Shaffer, the prosecution presented unchallenged evidence that both defendants fled the crime scene together, that Shaffer possessed a large sum of money shortly after the incident, and that Shaffer was arrested only a quarter-mile from the crime scene. Also, a police witness testified that the witness's trial testimony, identifying Shaffer as the person carrying a gun, was consistent with the statement she made to the police after the incident. This evidence was sufficiently compelling to render the admission of the challenged testimony harmless. Moreover, at trial, the prosecutor theorized that Anderson aided and abetted Shaffer in the crimes. Given Jernigan's identification of Shaffer and the unchallenged testimony that both defendants fled the crime scene together, which defendant actually carried the gun from the scene is not dispositive. In sum, even if the trial court abused its discretion by admitting the challenged testimony, any error is harmless.

B. Other Acts Evidence

Shaffer asserts that his conviction should be reversed because the evidence that he was arrested in a room where marijuana was found was inadmissible under MRE 404(b) as "other acts evidence," and because the prosecutor failed to provide the required notice, as required by MRE 404(b)(2). To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal. MRE 103(a)(1); *People v Griffin*, 235 Mich App 27, 44; 597 NW2d 176 (1999). Although Anderson's counsel objected to the evidence, she did so on relevancy grounds only. Thus, any issue concerning MRE 404(b) was not properly preserved. Therefore, we review the issue for a plain error that affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 752-753, 763-764; 597 NW2d 130 (1999).

MRE 404(b) prohibits "evidence of other crimes, wrongs, or acts" to prove a defendant's character or propensity to commit the charged crime. MRE 404(b)(1); see also *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004). But other acts evidence is admissible under MRE 404(b) if it is offered for a proper purpose, i.e., one other than to prove the defendant's character or propensity to commit the crime, is relevant to an issue or fact of consequence at trial, and is sufficiently probative to outweigh the danger of unfair prejudice, pursuant to MRE 403. *People v Starr*, 457 Mich 490, 496-497; 577 NW2d 673 (1998); *People v VanderVliet*, 444 Mich 52, 55, 63-64, 74-75; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). In application, the admissibility of evidence under MRE 404(b) necessarily hinges on the relationship of the elements of the charge, the theories of admissibility, and the defenses asserted. *VanderVliet*, *supra* at 75. Additionally, the prosecution is required to provide notice before trial when it intends to introduce other acts evidence. MRE 404(b)(2).

Because it is not apparent that the challenged evidence could not have been received successfully and correctly under MRE 404(b), Shaffer has failed to demonstrate plain error. *Carines*, *supra* at 763. The record demonstrates that the evidence was not offered to show that Shaffer had a bad character. Rather, the evidence was probative of Shaffer's intent and identity, and assisted the jury in weighing the witnesses' credibility. At trial, there was evidence that, in the bedroom where Shaffer was arrested, the police confiscated loose marijuana, additional marijuana rolled into cigars, beer, and approximately \$300. The police found an additional \$80 in Shaffer's pocket. The prosecutor theorized that Shaffer robbed the complainant of

approximately \$470, and used part of the money to purchase marijuana and beer, which explained why the exact amount of money stolen was not recovered. We conclude that there were legitimate, material, and contested grounds on which to offer the evidence. Moreover, the evidence was not inadmissible simply because the very nature of the evidence is prejudicial. The danger that MRE 404(b)(1) seeks to avoid is that of *unfair* prejudice, and defendant has not demonstrated that he was unfairly prejudiced. See *Starr, supra* at 499.

Furthermore, Shaffer cannot establish that the evidence prejudiced the outcome of the trial. The challenged testimony was of comparatively minor importance considering the totality of the evidence against Shaffer. There was substantial other evidence supporting Shaffer's convictions, including Jernigan's identification of him as the perpetrator, a witness's testimony that she saw him fleeing the scene with a gun, and his possession of approximately \$400 when he was arrested. Therefore, the evidence did not affect Shaffer's substantial rights. Accordingly, reversal is not warranted on this basis.

III. DEFENDANT ANDERSON'S ISSUE IN DOCKET NO. 253124

Anderson contends that there was no evidence that he agreed to participate in the acts or knew Shaffer's intent and, therefore, the evidence was insufficient to sustain his convictions for armed robbery and assault with intent to commit armed robbery. Anderson also argues that there was no evidence that he "helped" Shaffer after he committed the crime of assault with intent to commit murder and, therefore, the evidence was insufficient to sustain his conviction of accessory after the fact.

A. Standard of Review

When ascertaining whether sufficient evidence was presented at trial to support a conviction, we must view the evidence in a light most 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. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). We will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses. *Id.* at 514. Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

B. Aiding and Abetting

The elements of armed robbery are (1) an assault, (2) a felonious taking of property from the victim's presence or person, (3) while the defendant is armed with a weapon described in the statute. *People v Rodgers*, 248 Mich App 702, 707; 645 NW2d 294 (2001). The elements of assault with intent to rob while armed are (1) an assault with force or violence, (2) an intent to rob, and (3) the defendant being armed. *People v Smith*, 152 Mich App 756, 761; 394 NW2d 94 (1986).

Anderson does not challenge the individual elements of the offenses. Rather, he alleges that there was insufficient evidence that he aided and abetted Shaffer in the commission of the

crimes. A person who aids or abets the commission of a crime may be convicted and punished as if he directly committed the offense. MCL 767.39. “To support a finding that a 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 Izarraras-Placante*, 246 Mich App 490, 496-497; 633 NW2d 18 (2001) (citation omitted).

“Aiding and abetting” describes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds that might support, encourage, or incite the commission of a crime. *Carines, supra* at 757; *People v Rockwell*, 188 Mich App 405, 411-412; 470 NW2d 673 (1991). “The quantum of aid or advice is immaterial as long as it had the effect of inducing the crime.” *People v Lawton*, 196 Mich App 341, 352; 492 NW2d 810 (1992). Furthermore, an aider and abettor’s state of mind may be inferred from all the facts and circumstances, including 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, supra* at 758. But a defendant’s mere presence at a crime, even with knowledge that the offense is about to be committed, is not enough to make him an aider and abettor. *People v Norris*, 236 Mich App 411, 419-420; 600 NW2d 658 (1999).

Viewed in the light most favorable to the prosecution, the evidence was sufficient for a rational trier of fact to conclude that Anderson aided and abetted in the crimes of armed robbery and assault with intent to rob while armed in light of his actions and association with Shaffer. The evidence presented supported an inference that defendants jointly planned to commit a robbery, and that Anderson acted as a “lookout.” On the morning of the crimes, defendants discussed committing a robbery. In a statement to the police, Anderson admitted that he left his house with Shaffer and walked to the area of the ultimate location of the crimes. Anderson admitted that he and Shaffer watched people at a “check cashing place” for ten minutes. They saw the complainants leave the “check cashing place,” and drive to a gas station. Anderson admitted that Shaffer told him that he was going to rob someone, and that he saw Shaffer pull out a gun. Anderson also admitted that, when Shaffer approached the complainants, he positioned himself to watch. From this evidence, a jury could reasonably infer that Anderson knew Shaffer’s intent and assisted Shaffer by acting as a lookout.

Additionally, there was evidence that, after the shooting and robbery, Anderson and Shaffer fled the crime scene simultaneously. As they were fleeing, Anderson encouraged Shaffer to “come on.” There was evidence that defendants returned to their house, shared the proceeds from the robbery, and were still together when they were arrested approximately four hours after the incident. Contrary to Anderson’s suggestion, his conduct before, during, and after the incident was clearly sufficient to enable the jury to find, beyond a reasonable doubt, that he assisted Shaffer in the commission of the crimes with knowledge of Shaffer’s intent. Although Anderson asserts that evidence supporting his involvement was weak, the jury was entitled to accept or reject any of the evidence presented. See *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999), and *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). In sum, viewed in the light most favorable to the prosecution, the evidence was sufficient to sustain Anderson’s convictions of armed robbery and assault with intent to rob while armed.

B. Accessory After the Fact

We also reject Anderson's claim that there was insufficient evidence to sustain his conviction of accessory after the fact. A person is an accessory after the fact when, after obtaining knowledge of the principal's guilt after the completion of the crime, he renders assistance in an effort to hinder the detection, arrest, trial, or punishment of the principal. *People v Beard*, 171 Mich App 538, 545; 431 NW2d 232 (1988).

In his statement to the police, Anderson admitted that he saw Shaffer shoot the complainant. As previously indicated, Anderson fled the scene with Shaffer, and encouraged him to "come on." Anderson accompanied Shaffer to their house, and was still with him hours later. Given this evidence, a jury could reasonably infer that Anderson was aware of Shaffer's guilt and rendered assistance to hinder Shaffer's detection. In sum, viewed in the light most favorable to the prosecution, the evidence was sufficient to sustain Anderson's conviction of accessory after the fact.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Henry William Saad
/s/ Michael R. Smolenski