

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY JAMES WATSON,

Defendant-Appellant.

UNPUBLISHED

January 24, 2006

No. 257260

Saginaw Circuit Court

LC No. 03-023041-FC

Before: Bandstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of assault with intent to rob while armed, MCL 750.89; conspiracy to commit armed robbery, MCL 750.157a, MCL 750.529; conspiracy to possess narcotics over 650 grams, MCL 750.157a, MCL 333.7403(2)(a)(i); carrying a concealed weapon MCL 750.227; carrying a firearm with unlawful intent, MCL 750.226; felon in possession of a firearm, MCL 750.224f; and four counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced as a third-offense habitual offender, MCL 769.11, to four concurrent terms of 2 years in prison for the felony-firearm convictions, to run consecutive to concurrent terms of 23 years and 9 months to 50 years in prison for the assault with intent to rob while armed and two conspiracy convictions, and 6 to 10 years in prison for the CCW, carrying a firearm with unlawful intent, and felon in possession convictions. We affirm.

Defendant first argues that the trial court erred in denying his motion for a directed verdict and that there was insufficient evidence to sustain his convictions. We review de novo a trial court's decision on a motion for a directed verdict in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the charged crimes were proved beyond a reasonable doubt. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). Similarly, we review de novo a claim of insufficient evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *People v Fletcher*, 260 Mich App 531, 559; 679 NW2d 127 (2004).

An aider and abettor may be convicted and punished as though he directly committed the offense. MCL 767.39; *People v Mass*, 464 Mich 615, 628; 628 NW2d 540 (2001). To obtain a conviction for aiding and abetting, the prosecutor must show that: (1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave

encouragement which 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. *People v Moore*, 470 Mich 56, 67-68; 679 NW2d 41 (2004). Additionally, an aider and abettor must have the same requisite intent as that required of the principal. *Mass, supra* at 628.

A defendant's mere presence, even with knowledge that the offense is about to be committed or is being committed, is insufficient to establish that a defendant aided or assisted in the commission of a crime, *People v Norris*, 236 Mich App 411, 419-420; 600 NW2d 658 (1999). However, an aider and abettor's state of mind may be inferred from all of the facts and circumstances, including factors such as 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 Carines*, 460 Mich 750, 757-758; 597 NW2d 130 (1999).

The elements of assault with intent to rob while armed are: (1) an assault with force and violence; (2) an intent to rob or steal; and (3) the defendant's being armed. *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003). Additionally, there must be evidence that the defendant intended to rob or steal, because it is a specific-intent crime. *Id.* It is not necessary to show that a defendant had the specific intent to rob the person that was assaulted; rather, it is only necessary to prove that the assault was committed as a means to further the intended robbery. *People v Harris*, 110 Mich App 636, 643-644; 313 NW2d 354 (1981).

Here, there was sufficient evidence from which a rational trier of fact could find that defendant's co-conspirators committed an assault with the intent to rob while armed. Evidence was presented that the co-defendant rented a room at the house where the crimes occurred, and that he knew the owners and a drug dealer were scheduled to meet there to exchange drugs and money. There was evidence that a plan was devised to rob the homeowners and drug dealer when they arrived, demonstrated in part by numerous phone calls between the co-conspirators the evening before and morning of the crime. But, unbeknownst to the co-conspirators, the drug exchange had been thwarted by the authorities, and two police officers and a DEA agent came to the house with one of the owners. The co-conspirators hid in the co-defendant's bedroom and ultimately exchanged gunfire with the police, resulting in the death of two of the co-conspirators. The jury could have concluded that the co-conspirators were unaware of the fact that police officers were on the scene or that they otherwise maintained their intent to rob even if they were aware of that fact.

Further, there was sufficient evidence to conclude that defendant intended the commission of the crime or had knowledge that the co-conspirators intended its commission at the time he performed acts or gave encouragement which assisted the commission of the crime. Defendant was involved in the phone calls that preceded the crime and he drove one of the co-conspirators to a location where the co-conspirator procured a gun. Defendant admitted that he was hiding in the dark with the masked co-conspirators when the police arrived. This was corroborated by evidence that, when the police announced their presence, defendant fled through a window; defendant's knee was wounded and DNA testing established that his blood was found on the broken window glass. As discussed further below, there was evidence that, while at the house, defendant carried a gun. Viewing the evidence in a light most favorable to the prosecution, sufficient evidence existed from which a rational trier of fact could find beyond a reasonable doubt that defendant aided and abetted in an assault with intent to rob while armed.

The elements of felony-firearm are that defendant carried or possessed a firearm while he was committing or attempting to commit a felony. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). Possession may be actual or constructive, and it may be proved by circumstantial evidence. *Id.* at 437. Constructive possession exists if there is proximity to the weapon together with indicia of control. *Id.* at 438. A defendant has constructive possession of a firearm if the location of the weapon is known and the weapon is reasonably accessible to the defendant. *Id.* The elements of carrying a dangerous weapon with unlawful intent are that defendant carried a firearm or dangerous weapon with the intent to unlawfully use it against another person. *People v Harrington*, 194 Mich App 424, 428; 487 NW2d 479 (1992). The elements of carrying a concealed weapon are that defendant carried a weapon concealed on or about his person. *People v Shelton*, 93 Mich App 782, 785; 286 NW2d 922 (1979).

Here, there was sufficient evidence from which a rational jury could find that defendant carried or possessed a firearm while he was committing or attempting to commit a felony; that he carried a firearm with the intent to unlawfully use it against another person; and that he carried a weapon concealed on or about his person. Evidence was presented that a recently abandoned .45-caliber gun was found a few houses away from the crime scene. Additionally, defendant was the only perpetrator who fled the crime scene and who would have had access to the area where the gun was dropped. Further, one of the officers testified that the first person that he saw come through the window, i.e., defendant, headed in the direction where the gun was found. Viewing the evidence in a light most favorable to the prosecution, sufficient circumstantial evidence existed from which a rational trier of fact could find beyond a reasonable doubt that defendant possessed a gun while he was attempting to commit a robbery, that he carried the gun with the intent to unlawfully use it against another person, and that he carried the gun concealed on or about his person.

Additionally, there was sufficient evidence to sustain defendant's felon in possession conviction where defendant stipulated that he had been convicted of a felony, and had not regained eligibility to carry a weapon on the date of the instant offense. *People v Perkins*, 262 Mich App 267, 269-270; 686 NW2d 237 (2004), *aff'd* 473 Mich 626; 703 NW2d 448 (2005).

The elements of conspiracy are that defendant intended to combine with others and intended to accomplish an illegal objective. *Mass, supra* at 629. The prosecution must prove that the parties "specifically intended to further, promote, advance, or pursue an unlawful objective." *People v Justice (After Remand)*, 454 Mich 334, 347; 562 NW2d 652 (1997). Proof of a conspiracy may be derived from the circumstances, acts, and conduct of the parties, and inferences are permissible. *Id.* at 347. The scope of the conspiracy may be determined by examining circumstantial evidence, but any inferences that are drawn must be reasonable. *Id.* at 348.

Here, there was sufficient evidence from which a rational jury could find that defendant intended to combine with others and intended to accomplish the illegal objective of armed robbery and possession of narcotics. Evidence was presented that numerous phone calls were made between defendant and his co-conspirators the evening before and morning of the crime and that defendant drove one of his co-conspirators to procure a gun and then drove to the house where the incident occurred. Viewing the evidence in a light most favorable to the prosecution, sufficient circumstantial evidence existed from which a rational trier of fact could find beyond a

reasonable doubt that defendant knew of and was involved in the plan to steal the drugs and money.

Defendant also argues that he is entitled to resentencing pursuant to the United States Supreme Court's decision in *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). Our Supreme Court and this Court have concluded that *Blakely* does not apply to sentences imposed in Michigan. *People v Wilson*, 265 Mich App 386, 399; 695 NW2d 351 (2005), citing *People v Claypool*, 470 Mich 715, 730-731 n 14; 684 NW2d 278 (2004) and *People v Drohan*, 264 Mich App 77, 89 n 4; 689 NW2d 750 (2004), lv gtd in part 472 Mich 881; 693 NW2d 823 (2005).

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Helene N. White