

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER CLAYTON HAMMOND,

Defendant-Appellant.

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UNPUBLISHED

March 14, 2006

No. 255427

Oakland Circuit Court

LC No. 03-188316-FC

Before: Hoekstra, P.J., and Neff and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of first-degree home invasion, MCL 750.110a(2), two counts of armed robbery, MCL 750.529, and three counts of possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to concurrent terms of 5 to 20 years' imprisonment for the first-degree home invasion conviction and 10 to 30 years' imprisonment for the armed robbery convictions, to be served consecutive to the mandatory two-year terms for his convictions of felony-firearm. Defendant appeals as of right. We affirm.

Defendant's convictions arise from the armed robbery of two individuals at a Ferndale home. Several of the people present in the home testified that defendant and two others forced their way into the home at gunpoint, then proceeded to steal a cell phone, a video camera, and a cashbox containing approximately \$1,500. On appeal, defendant contends that he was denied a fair trial as a result of misconduct by the prosecutor and erroneous instruction of the jury by the trial court. We disagree.

Regarding the conduct of the prosecutor, defendant asserts that he was denied a fair trial by the prosecutor's questioning of him on cross-examination concerning his codefendants' pleas of guilty and nolo contendere to charges stemming from this incident. Because defendant failed to properly preserve this issue by objecting to the prosecutor's questioning at trial, we review this claim of prosecutorial misconduct for plain, outcome-determinative error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); see also *People v Thomas*, 260 Mich App 450, 453-454; 678 NW2d 631 (2004).

Although the conviction of another person involved in a criminal incident is not admissible as substantive evidence at a defendant's separate trial, the mere revelation of the fact

that a codefendant has pleaded guilty does not necessarily entitle a defendant to reversal of his conviction. See *People v Barber*, 255 Mich App 288, 297; 659 NW2d 674 (2003). Rather,

“‘[w]hether (a prosecuting attorney’s disclosure during trial that another defendant has pleaded guilty) was prejudicial is a question of fact, and, in the final analysis, each case must be determined on its own particular facts, for there is no legal standard by which the prejudicial qualities of a prosecuting attorney’s remarks or conduct can be gauged, and it is only when, in the light of all the circumstances attendant upon a trial, the misconduct complained of can be said to have influenced the jury’s verdict and prevented a fair trial, that prejudice results.’” [*People v Eldridge*, 17 Mich App 306, 317; 169 NW2d 497 (1969), quoting 48 ALR2d 1016, § 1, p 1018.]

Thus, in reviewing this claim of prosecutorial misconduct, we must examine the record to evaluate the conduct in question in context of the evidence, issues and defense arguments. *Thomas, supra* at 454; *People v Callon*, 256 Mich App 312, 330; 662 NW2d 501 (2003).

Here, the record indicates that it was counsel for defendant who first raised the issue of codefendants’ pleas when, during voir dire, counsel questioned various jurors regarding their ability to set aside the conduct of the true perpetrators of the armed robberies, whose cases had been “resolved,” and consider only the merits of the case against defendant. In his opening argument, counsel for defendant again addressed codefendants’ confessed responsibility for the crimes, expressly indicating that codefendants had “pled” in separate proceedings. Counsel then went on to explain that the evidence would show that although present at the time of the robberies, defendant was unaware of his codefendants’ intentions to rob the occupants of the home when he unwittingly agreed to accompany them to Ferndale that afternoon. Consistent with this defense, defendant testified on direct examination that he believed that he and his codefendants were traveling to Ferndale that day to purchase recording equipment and that he was unaware of his codefendants’ intent to commit the crimes to which they “pled.” It was not until defendant later eschewed this defense by testifying on cross-examination that neither he nor codefendants ever attempted to rob the occupants of the house that the prosecution raised the issue of his codefendants’ pleas.

It is clear from the record that the fact that codefendants had pleaded to charges stemming from the incident for which defendant was on trial was part of a defense strategy to demonstrate that the responsible parties had already been held accountable and that defendant was merely unwittingly present at the location. It is equally clear that the prosecutor’s questioning on that subject was consistent with that strategy and, therefore, did not affect the outcome of the trial. Thus, this case is distinguishable from those in which the prosecutor deliberately injected evidence of a codefendant’s guilty pleas in an improper attempt to prejudice the defendant. See, e.g., *People v Brocato*, 17 Mich App 277, 294-295; 169 NW2d 483 (1969); *Eldridge, supra* at 313-317. Indeed, we perceive no outcome-determinative prejudice inuring to defendant from discussion of a topic first raised and relied upon as a theory of defense. Accordingly, we conclude that defendant has failed to establish that the prosecutor’s questions regarding codefendants’ pleas constituted plain error requiring reversal. *Carines, supra* at 763.

Defendant next asserts that he was denied a fair trial because the trial court failed to properly instruct the jury regarding the intent required to be convicted of first-degree home

invasion and armed robbery on an aiding and abetting theory. Although defendant generally objected to the inclusion of an instruction on aiding and abetting, he did not otherwise object to the jury instructions, and, in fact, expressed his satisfaction with them. Because defendant acceded to the instructions concerning this issue, we conclude that he has waived review of the instructions concerning this issue. *People v Lueth*, 253 Mich app 670, 688; 660 NW2d 322 (2002).

Nevertheless, we conclude that defendant's assertion of error is without merit. Defendant contends that the trial court's aiding and abetting instructions, in effect, lowered the prosecutor's burden of proof by failing to adequately inform the jury that to convict defendant of armed robbery and home invasion pursuant to an aiding and abetting theory, defendant had to have the requisite specific intent. Jury instructions are reviewed in their entirety to determine if there was any error, and "[e]ven if the instructions are imperfect, there is no error if they fairly presented the issues to be tried and sufficiently protected the defendant's rights." *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994).

Pursuant to MCL 767.39, "[e]very 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." Generally, to be convicted as an aider and abettor, a defendant must have the same intent as that which is necessary to be convicted as a principal. *People v Mass*, 464 Mich 615, 628; 628 NW2d 540 (2001). However, an aider and abettor may also be convicted if he knows that the principal has the requisite intent. *People v King*, 210 Mich App 425, 431; 534 NW2d 534 (1995).

In this case, the trial court instructed the jury on the specific intent necessary to convict a defendant of both first-degree home invasion and armed robbery. The court then accurately set forth the law of aiding and abetting. See, e.g., *People v Lawton*, 196 Mich App 341, 351-352; 492 NW2d 810 (1992) (approving an aiding and abetting instruction nearly identical to that given in this case). Specifically, the trial court instructed that to convict defendant on this theory the jury had to find that defendant intended to commit the crimes or that he knew that someone else intended to commit the crimes. These instructions, when viewed in conjunction with those regarding first-degree home invasion and armed robbery, correctly stated the law regarding the intent necessary to convict a defendant on a theory of aiding and abetting, and, accordingly, did not lower the prosecutor's burden of proof.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Janet T. Neff

/s/ Donald S. Owens