

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAMON RASHAAD PERRY,

Defendant-Appellant.

UNPUBLISHED

September 28, 2010

No. 292431

Wayne Circuit Court

LC No. 09-001898-FC

Before: TALBOT, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right from his bench-trial conviction of armed robbery, MCL 750.529. Defendant was sentenced as a third-offense habitual offender, MCL 769.11, to ten to 20 years' imprisonment. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The sole issue on appeal is whether the trial court erred when it refused to accept defendant's plea to unarmed robbery. A trial court's decision to refuse to accept a defendant's plea is reviewed for an abuse of discretion. *People v Grove*, 455 Mich 439, 444, 460; 566 NW2d 547 (1997). There is no constitutional right to have a plea accepted. *People v Bryant*, 129 Mich App 574, 577; 342 NW2d 86 (1983).

Defendant was charged with armed robbery after a pizza deliveryman was assaulted and robbed by two men outside of a townhouse where he had delivered pizza. At a pretrial conference, the prosecution indicated that it would not reduce the charge against defendant, but would agree to a sentence of six to 20 years' imprisonment if defendant agreed to plead guilty. The sentence would have been well below the range produced by the sentencing guidelines, given defendant's status as an habitual offender. Defendant did not want to accept the plea and maintained his innocence. He agreed to a bench trial.

At a later pretrial hearing, the prosecution again offered a plea deal, under the terms of which defendant would plead guilty to unarmed robbery and would receive five to 15 years' imprisonment. Defendant was ambivalent. The trial court addressed defendant directly, warning him of the severe potential sentence associated with an armed robbery conviction, especially in light of defendant's habitual-offender status. After a brief recess, defense counsel indicated that defendant "would like to take advantage of the deal." The trial court advised defendant of his

rights. The court then attempted to ascertain the factual basis for the plea, and the following exchange took place:

THE COURT: All right. Now, tell us what you did back on December 27th of 2008 that make [sic] you believe you committed the crime of unarmed robbery at 15015 Knoll Way in Romulus.

What did you do?

THE DEFENDANT: I was present on the scene first and foremost, your Honor. And I knew the guys that was gon' rob him was going to rob him. Planned to rob him and I bought his stuff from the guy.

THE COURT: Okay. Say that again now.

You were present when some guy robbed another guy?

THE DEFENDANT: Yeah. Two people in my neighborhood told me that they was gon' rob Mr. Six.

THE COURT: Okay. He was the pizza –

THE DEFENDANT: I didn't do nothing about it.

THE COURT: -- deliveryman.

THE DEFENDANT: Yes.

THE COURT: They said that they were gonna rob him and then what did you do?

THE DEFENDANT: I bought the stuff from him after they robbed him.

THE COURT: What did you do while they were robbing him?

THE DEFENDANT: Stood there on the corner.

THE COURT: Did you say something to them to encourage them to rob him?

THE DEFENDANT: No, sir. I told them they shouldn't do it.

THE COURT: Oh, you told them they shouldn't do it?

THE DEFENDANT: Yes, sir.

THE COURT: And then you bought the stuff from them afterwards. Well, we'll see you tomorrow for trial, okay.

Defendant acknowledges that he had no constitutional right to have his guilty plea accepted. However, defendant argues that the trial court's failure to accept the plea resulted in severe prejudice to him, because he was ultimately sentenced to a ten-year minimum term, which was twice the proposed minimum under the plea offer.

MCR 6.302(D) provides that before a trial court may accept a defendant's guilty plea, it must first "establish support for a finding that the defendant is guilty of the offense charged or the offense to which the defendant is pleading." A factual basis for a plea exists if an inculpatory inference may be drawn from the defendant's admissions. *People v Jones*, 190 Mich App 509, 511; 476 NW2d 646 (1991). Therefore, even if a defendant denies an element of the crime, a trial court may nevertheless accept a guilty plea if an inculpatory inference can be drawn from what the defendant has stated. *Id.* at 512.

The elements of unarmed robbery are: (1) the felonious taking of property from another; (2) by force or placing the victim in fear; and (3) being unarmed. MCL 750.530; *People v Johnson*, 206 Mich App 122, 125-126; 520 NW2d 672 (1994). Defendant denied that he played a part in the robbery in any direct way. Therefore, aiding and abetting must be considered. The elements of aiding and abetting are:

(1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that assisted in 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 Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006) (internal citations and quotation marks omitted); see also MCL 767.39.]

A defendant's mere presence, even with knowledge that the offense is about to be committed or is being committed, is not enough to make the defendant an aider or abettor. *People v Norris*, 236 Mich App 411, 419-420; 600 NW2d 658 (1999).

There was not a sufficient factual basis to support defendant's plea. Defendant's statement clearly indicated that he did not rob the victim and did not do anything to encourage the robbery. Defendant did not state that he was part of the plan to rob the victim or that he kept watch while the others robbed the victim. In fact, defendant claimed that he told the other men not to do it and then just stood by and watched. Defendant stated that he knew the crime was going to take place and purchased some stolen items, but that was not enough to support a plea to unarmed robbery. Therefore, the trial court did not abuse its discretion when it refused to accept the plea.

Defendant claims that his ultimate conviction for armed robbery meant that a factual basis had to have existed to support a plea to unarmed robbery. That is not true. A guilty plea must be based on a defendant's unequivocal admission of guilt, and here, based only on defendant's pretrial statements, there was no support for the plea. At trial, however, the evidence clearly supported defendant's ultimate conviction for armed robbery. For example, the victim testified that one of his assailants wore a white jacket with green and black "cow pattern" spots on it, and a jacket matching that description was found in the bedroom where defendant was arrested. Additionally, the victim's personal items were found in defendant's possession when

the officers conducted a search incident to his arrest. The fact that the evidence presented at trial supported a conviction for armed robbery does not compel a finding that there was a factual basis for accepting defendant's plea of guilt to unarmed robbery.

Affirmed.

/s/ Michael J. Talbot

/s/ Patrick M. Meter

/s/ Pat M. Donofrio