

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE KIRKSEY, JR.

Defendant-Appellant.

UNPUBLISHED

July 24, 2012

No. 305953

Oakland Circuit Court

LC No. 2010-234575-FC

Before: DONOFRIO, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals by right his conviction of armed robbery. MCL 750.529 (armed robbery). Defendant was convicted as an aider and abettor pursuant to MCL 767.39. Defendant was sentenced to 30 to 36 years' imprisonment. We affirm.

I. BASIC FACTS

This appeal arises out of the armed robbery of a Metro PCS store in Royal Oak. Defendant and another man, Tommy Threat, entered the store together. Threat approached the store's owner, Lorenzo Savaya, and asked to see a cell phone. Savaya testified that defendant began walking around the store and looking towards the door, the back room, and out the windows. Threat produced a handgun and took from Savaya's possession approximately seven hundred dollars and credit card receipts. Defendant remained in the store during the robbery and continued to look around. Threat then took Savaya to the back room and told him to open a filing cabinet. While moving a mattress that was blocking the filing cabinet, Savaya saw his chance and ran from the store. Savaya testified that both Threat and defendant followed him, and that the two men yelled, "Run, run. Keep on running. If you don't keep—if you stop running, we're gonna shoot you."

Defendant and Threat left the area in a red Cadillac. Savaya was able to reach a nearby business and tell them he had been robbed; someone called 911. Royal Oak Police Officers Wern and Oaks responded. Wern and Oaks located a red vehicle with its headlights off; when Wern shined his spotlight on the car, the car sped away. Wern and Oaks pursued and radioed the dispatcher that they were pursuing a fleeing car. Royal Oak Police Lieutenant Donald Scher and Officer Boroki joined in the pursuit in two marked police vehicles. Wern observed one person driving the car and another in the back seat of the car that appeared to be "fumbling around" with something. The car stopped and Threat leaned out the window and pointed a "big, silver gun" at the officers' car before resuming flight. Scher observed the passenger of the car "put a metallic

object out the window” that was “shiny.” A short time later, the car stopped again and Threat pointed a different gun at the car and fired two shots. Shots were fired from the car as the chase continued. The car was eventually immobilized by Scher, who rammed the car, pushing it off the road. Scher got out of his vehicle and ordered the two men to get out of the car with their hands up. Defendant got out of the vehicle. Scher testified that defendant took a step and started to turn; Scher thought defendant was armed and shot defendant in the buttocks.

Police recovered a nine-millimeter gun from the Cadillac, and a .45 caliber handgun was found on the sidewalk by a civilian. The money and credit card receipts were found in a brown coat in the back of the Cadillac.

II. SUFFICIENCY OF THE EVIDENCE

Defendant first argues that the prosecution did not carry its burden of proving beyond a reasonable doubt that defendant is guilty of armed robbery on an aiding and abetting theory. We review sufficiency of the evidence claims de novo. *People v Ericksen*, 288 Mich App 192, 195-196; 793 NW2d 120, 122 (2010).

We view the evidence in the light most favorable to the prosecutor to determine whether a rational jury could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006). However, this Court should not interfere with the fact finder’s role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, amended 441 Mich 1201 (1992). It is for the trier of fact rather than this Court “to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.” *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). A prosecutor need not negate every reasonable theory of innocence, but must only prove his own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

MCL 750.529 provides as follows:

A person who engages in conduct proscribed under [MCL 750.530] and who in the course of engaging in that conduct, possesses a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon, or who represents orally or otherwise that he or she is in possession of a dangerous weapon, is guilty of a felony punishable by imprisonment for life or for any term of years. If an aggravated assault or serious injury is inflicted by any person while violating this section, the person shall be sentenced to a minimum term of imprisonment of not less than 2 years.

MCL 750.530 proscribes unarmed robbery and provides in relevant part:

(1) A person who, in the course of committing a larceny of any money or other property that may be the subject of larceny, uses force or violence against any person who is present, or who assaults or puts the person in fear, is guilty of a felony punishable by imprisonment for not more than 15 years.

Therefore, in order to support a conviction of armed robbery under MCL 750.529, a prosecutor must prove the following elements:

(1) the defendant, in the course of committing a larceny [] of any money or other property that may be the subject of a larceny, used force or violence against any person who was present or assaulted or put the person in fear, and (2) the defendant, in the course of committing the larceny, either possessed a dangerous weapon, possessed an article used or fashioned in a manner to lead any person present to reasonably believe that the article was a dangerous weapon, or represented orally or otherwise that he or she was in possession of a dangerous weapon. [*People v Chambers*, 277 Mich App 1, 7; 742 NW2d 610 (2007).]

MCL 767.39 provides that “[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.”

To establish that a defendant aided and abetted in the commission of an offense, the prosecutor therefore 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 Turner*, 213 Mich App 558, 568-569; 540 NW2d 728 (1995), overruled in part on other grounds, *People v Mass*, 464 Mich 615; 628 NW2d 540 (2001).]

Defendant argues that the prosecutor did not prove the second and third elements of aiding and abetting, and claims that the evidence shows he was merely present when Threat committed armed robbery. We disagree. First, sufficient evidence was presented that defendant “performed acts” that assisted the commission of the crime of armed robbery by acting as a “lookout.” Testimony was presented that defendant came into to the store with Threat, was constantly looking around the store while the robbery was taking place, yelled at the victim as he ran out the store, and then got into the car with Threat as he made his get-away. Viewed in the light most favorable to the prosecution, this evidence suffices to have enabled a rational jury to find that the second element of aiding and abetting was proven beyond a reasonable doubt and that defendant was not “merely present” at the scene. See *People v Fuller*, 395 Mich 451, 454; 236 NW2d 58 (1975); *People v Lyons*, 70 Mich App 615, 618; 247 NW2d 314 (1976).

Defendant also argues that he did not intend the commission of armed robbery or know that Threat intended its commission at the time he rendered aid and assistance. Questions of intent are left up to the trier of fact, *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009), and we will not interfere with how the fact finder weights the evidence. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, amended 441 Mich 1201 (1992). Intent can be inferred using all the facts and circumstances, *People v Safiedine*, 163 Mich App 25, 29; 414 NW2d 143 (1987), and only a minimal amount of circumstantial evidence is needed to make a finding of fact. *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). In this case, the

prosecution presented sufficient evidence to satisfy this minimal standard. Defendant arrived at the store with Threat, who was concealing a gun in his coat pocket. Defendant immediately began looking around the store while Threat spoke with Savaya. Defendant continued to look around the store and out the windows while Threat took the money; and followed Threat and Savaya into the back room. This evidence is sufficient to enable a rational juror to conclude defendant intended, or knew that Threat intended, the commission of an armed robbery at the time he rendered his lookout services. Because circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime, defendant meets all of the elements of aiding and abetting. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

III. OV 19

Defendant's second argument is that he must be resentenced because the facts do not support adding 15 points to his offense variable score for allegedly interfering with justice by threat of force. We disagree.

"A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score." *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). The "findings of fact by the trial court may not be set aside unless clearly erroneous." MCR 2.613(C). We will "uphold the trial court's guidelines scoring if there is any evidence in the record to support it." *People v Houston*, 261 Mich App 463, 471; 683 NW2d 192 (2004).

MCL 777.49(b) provides in relevant part that an offender be scored 15 points if he "used force or the threat of force against another person or property of another person to interfere with, attempt to interfere with, or that results in the interference with the administration of justice or the rendering of emergency services." "[T]he police are an integral component in the administration of justice, regardless of whether they are operating directly pursuant to a court order." *People v Smith*, 488 Mich 193, 202; 793 NW2d 666 (2010). Thus, "interfering with a police officer's attempt to investigate a crime constitutes interference with the administration of justice." *People v Passage*, 277 Mich App 175, 180; 743 NW2d 746 (2007).

At trial, the prosecutor introduced testimony from Scher that the defendant pointed a gun at the police officers during a high speed car chase. Although defendant disputes Scher's testimony, the trial court was free to believe it. *Houston*, 261 Mich App at 471. It is reasonable to infer that defendant's actions were motivated by a desire to prevent the police from discovering his involvement in the robbery, and that they involved the use of force against another person. Because the prosecutor's claim that defendant interfered with justice by threat of force is supported by evidence, we affirm.

Affirmed.

/s/ Pat M. Donofrio
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra