

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STANLEY JAMES WELC,

Defendant-Appellant.

UNPUBLISHED

March 27, 1998

No. 197421

Muskegon Circuit Court

LC No. 96-138944 FC

Before: Markey, P.J., and Bandstra and Markman, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529; MSA 28.797. Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to twenty to forty years' imprisonment. Defendant now appeals his conviction and sentence as of right. We affirm.

Defendant claims on appeal that the prosecution failed to present sufficient evidence of the elements of armed robbery or aiding and abetting an armed robbery to sustain his conviction. We disagree. Viewing the evidence in this case in the light most favorable to the prosecution, the jury could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

Defendant was convicted of armed robbery. The elements of armed robbery are: (1) an assault, (2) a felonious taking of property from the victim's person or presence, and (3) the defendant being armed with a dangerous weapon or with an article used or fashioned in such a way as to lead a reasonable person to believe that it was a dangerous weapon at the time of the robbery. *People v Jolly*, 442 Mich 458, 465; 502 NW2d 177 (1993); *People v Johnson*, 206 Mich App 122, 123; 520 NW2d 672 (1994). The jury was also instructed on the elements of aiding and abetting, which are: (1) the charged crime was either committed by defendant or someone else, (2) the defendant gave encouragement or performed acts that aided and 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 of giving aid and encouragement. *People v Partridge*, 211 Mich App 239,

240; 535 NW2d 251 (1995). One who aids and abets in the commission of a crime may be prosecuted and punished the same as the one who directly committed the offense. MCL 767.39; MSA 28.979.

In this case, Officer Orrison testified that defendant conceded that the assault and robbery had occurred, but that the original plan was only for an assault, not a robbery. In addition, Orrison testified that defendant claimed that Burgess “also” had a stick, and that he, i.e., defendant, had thrown the wallet into the channel. By saying that Burgess “also” had a stick, defendant insinuated that all three of the men assaulted the victim with sticks. The credibility of Orrison’s testimony regarding defendant’s confession was a matter to be determined by the trier of fact. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). Juries are in a much better position to decide the weight and credibility to be given to a witness’ testimony. *Wolfe, supra* at 514-515. In conjunction with defendant’s confession, there was circumstantial evidence of his participation in assaulting the victim with a dangerous weapon. Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute sufficient proof of the elements of a crime. *Jolly, supra* at 466.

Shortly after the incident, defendant was found in a vehicle with Burgess, the man identified by the victim as the person who first approached him and knocked him to the ground. The victim testified that more than one person was involved in the assault and that he was hit in the head and legs with a hard object that felt like a broomstick. Upon inspection of the car, three sticks were discovered inside. Furthermore, a piece of black plastic lying on the ground at the crime scene fit perfectly into one of the sticks found in the car.

The jury could also have reasonably inferred based on all the facts and circumstances that defendant participated in stealing the victim’s wallet. The victim testified that the assailants grabbed the back pockets of his jeans, ripped his jeans, and then took his wallet from his pants. The assault ended shortly after the victim’s wallet was removed. Moreover, Officer Orrison testified that defendant admitted to disposing of the wallet himself, by throwing it into the channel. Assuming that the three men did not plan on robbing the victim as claimed by defendant, it is clear from the facts that the intent of one or more of the actors changed during the course of the assault. Even if McTaggart and/or Burgess physically took the victim’s wallet, the above facts constitute sufficient evidence upon which the jurors could conclude that defendant formed the requisite intent for aiding and abetting in the armed robbery.

Defendant also claims on appeal that his sentence violates the principle of proportionality set forth in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We disagree. In light of the circumstances surrounding this assaultive offense and the fact that defendant was given numerous chances to rehabilitate himself after his numerous prior felony convictions, we conclude that defendant’s sentence is not disproportionate. *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996).

We affirm.

/s/ Jane E. Markey

/s/ Richard A. Bandstra

/s/ Stephen J. Markman