# STATE OF MICHIGAN

# COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES WILBUR MARTELL,

Defendant-Appellant.

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UNPUBLISHED
November 13, 1998

No. 204148
Oakland Circuit Court
LC No. 94-133769 FH

Before: Murphy, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Defendant was convicted by a jury of accessory after the fact, MCL 750.505; MSA 28.773, and carrying a concealed weapon in a motor vehicle, MCL 750.227(2); MSA 28.424(2), and was sentenced to a probationary term of one year. He appeals as of right. We affirm.

Defendant, a private investigator, was charged with being an accessory after the fact to an assault committed by his client. He was also charged with aiding and abetting his client in carrying a concealed weapon in an automobile. Defendant first argues that the trial court erred by denying his motion for directed verdict with respect to each charge. We disagree.

The crime of accessory after the fact is a common-law felony punishable under the catch-all provision of MCL 750.505; MSA 28.773. *People v Cunningham*, 201 Mich App 720, 722; 506 NW2d 624 (1993). A person is an accessory after the fact when, after obtaining knowledge of the principal's guilt after completion of the crime, he renders assistance in an effort to hinder the detection, arrest, trial, or punishment of the principal. *People v Usher*, 196 Mich App 228, 232; 492 NW2d 786 (1992). Here, evidence that defendant's client fired a weapon at a person in an automobile was sufficient to establish an assault. *People v Harrington*, 194 Mich App 424, 428, 430; 487 NW2d 479 (1992). Defendant, who was driving a van, witnessed his client commit the assault and then took him along in the van in pursuit of the victim. The victim subsequently approached a police officer to report the incident and, after the victim pointed to defendant's vehicle, defendant turned off the road, drove into the exit of a bank's drive-through window, and attempted to exit onto another road via the drive-through entrance. After being stopped by police, defendant did not disclose the fact that his client had a weapon, and he later lied to police about witnessing the crime. When viewed in a light most

favorable to the prosecution, we find this circumstantial evidence to be sufficient proof that defendant intended to hinder the detection of the crime and his client's arrest to allow the charge of accessory after the fact to be submitted to the jury. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997).

"Aiding and abetting" describes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds that might support, encourage, or incite the commission of a crime. *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995). *People v Lawton*, 196 Mich App 341, 352; 492 NW2d 810 (1992).

> To support a finding that a defendant aided and abetted a crime, 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 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. An aider and abettor's state of mind may be inferred from all the facts and circumstances. Factors that may be considered include 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.
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> To sustain an aiding and abetting charge, the guilt of the principal must be shown. However, the principal need not be convicted. Rather, the prosecutor need only introduce sufficient evidence that the crime was committed and that the defendant committed it or aided and abetted it. [*Turner*, *supra* at 568-569 (citations omitted).]

The evidence showed that defendant's client was armed with a gun, which defendant knew from witnessing the shooting, and that the client had the gun in his possession while in the vehicle. When viewed in a light most favorable to the prosecution, the evidence that defendant knew that his client had a gun and allowed his client to enter the vehicle was sufficient to allow the charge of carrying a concealed weapon to be submitted to the jury. *People v Courier*, 122 Mich App 88, 90; 332 NW2d 421 (1982). Hence, the trial court properly denied defendant's motion.

When defendant renewed his motion after putting in his proofs, the only new evidence presented was defendant's testimony that he immediately disarmed his client and placed the gun in a briefcase. Defendant's ability to persuade the jury regarding his version of events depended upon his credibility. Evaluations of such credibility fall exclusively within the purview of the jury. The jury's failure to believe defendant is not subject to challenge by a claim that there was insufficient evidence to send the case to it. *People v Jackson*, 42 Mich App 391, 395; 202 NW2d 459 (1972). Further, defendant has failed to cite any authority in support of his position that his own license to carry a concealed weapon authorized him to aid and abet another who was not so licensed and, therefore, he has failed to properly present this argument for appellate review. *People v Fowler*, 193 Mich App 358, 361; 483 NW2d 626 (1992).

Defendant next contends that the trial court erred by allowing the prosecutor to impeach two defense witnesses regarding their failure to report the incident to the police before trial. Defendant failed to preserve this issue by making a timely objection at trial on the same ground asserted on appeal. MRE 103(a)(1); *People v Welch*, 226 Mich App 461, 464; 574 NW2d 682 (1997). Because the prosecutor did not mention the testimony again after eliciting it, and because a curative instruction would have dispelled any prejudice resulting from the evidence, we conclude that a failure to review the issue would not result in a miscarriage of justice. *People v Mayfield*, 221 Mich App 656, 661; 562 NW2d 272 (1997).

Defendant also contends that the trial court improperly precluded him from cross-examining his client's victims about a possible plea- or sentence-bargain in exchange for his testimony. This issue was not preserved for appeal because defendant did not make an offer of proof to substantiate his claim that any such bargain was made. MRE 103(a)(2); *People v Stacy*, 193 Mich App 19, 31; 484 NW2d 675 (1992).

Defendant next asserts that the trial court erred by failing to give a curative instruction on the issue of investigator-client privilege immediately upon defendant's request. Because the issue of the privilege was not relevant to the actual charges against defendant, because defendant did not object to the court's handling of the issue regarding a cautionary instruction, and because the court included in its final instructions the statute regarding the privilege as requested by defendant, we conclude that the delay in giving the instruction did not prejudice defendant or result in a miscarriage of justice and, therefore, reversal is not warranted. *People v Kelly*, 386 Mich 330, 337; 192 NW2d 494 (1971); *People v King*, 58 Mich App 390, 397; 228 NW2d 391 (1975).

Lastly, defendant contends that the prosecutor improperly elicited testimony that he exercised his right to remain silent after being advised of his *Miranda*[1] rights. Defendant failed to preserve this issue for appeal. Nonetheless, in light of the fact that the prosecutor only elicited the testimony once and did not raise it in closing argument, as well as the fact that defendant elicited the same testimony from a defense witness, we find that any error was harmless. *People v Belanger*, 454 Mich 571, 576; 563 NW2d 665 (1997).

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).