STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of THEOTIS LAWSON, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THEOTIS LAWSON,

Defendant-Appellant.

UNPUBLISHED
September 24, 1999

No. 206869
Wayne Juvenile Court
LC No. 96-340518

Before: McDonald, P.J., and Kelly and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right from a juvenile court order adjudicating him responsible for carjacking, MCL 750.529a(1); MSA 28.797(a)(1), and committing him to the custody of the Family Independence Agency. We affirm.

Defendant first contends that the juvenile court erred in admitting his confession into evidence because it was not freely and voluntarily made. In reviewing a trial court's determination of voluntariness, this Court must examine the entire record and make an independent determination. *People v Gould*, 225 Mich App 79, 88; 570 NW2d 140 (1997). The trial court's findings of fact will not be disturbed unless they are clearly erroneous. *People v LoCicero (After Remand)*, 453 Mich 496, 500; 556 NW2d 498 (1996). The trial court's factual findings are clearly erroneous if, after review of the record, this Court is left with a definite and firm conviction that a mistake has been made. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997).

The admissibility of a juvenile's statement depends upon whether, under the totality of the circumstances, the statement was voluntarily made. The test of voluntariness is the same as that for an adult: whether, considering the totality of the circumstances, the statement was the product of an essentially free and constrained choice or whether the defendant's will was overborne and his capacity for self-determination was critically impaired. *Givans*, *supra* at 120-121. Relevant factors include

whether the defendant was advised of his constitutional rights and, if so, whether he clearly understood and waived those rights; the degree of police compliance with MCL 764.27; MSA 28.866 and the juvenile court rules; the presence of an adult parent, custodian or guardian; the defendant's personal background; the defendant's age, educational and intelligence level, and the extent of his prior experience with the police; the length of detention before the statement was made; the repeated and prolonged nature of the questioning; and whether the defendant was injured, intoxicated, in ill health, physically abused or threatened with abuse, or deprived of food, sleep or medical attention. *Givans, supra* at 121; *People v Good*, 186 Mich App 180, 189; 463 NW2d 213 (1990).

There is no doubt that defendant was advised of his constitutional rights. They were read to him, the officer discussed them with him, and he indicated that he understood his rights and wished to waive them and make a statement. Because defendant was only thirteen and not subject to the automatic waiver statute, MCL 600.606(1); MSA 27A.606(1), he had to "be taken immediately before the juvenile division of the probate court of the county where the offense is alleged to have been committed, and the officer making the arrest shall immediately make and file, or cause to be made and filed, a petition against the child . . . ." MCL 764.27; MSA 28.866. The date and time of defendant's arrest is not apparent from the record. He waived his rights and gave a statement late on the night of March 31 and early in the morning of April 1, 1997. Even if the statute was violated, however, that is only one factor to be considered and suppression is not required if the totality of the circumstances indicates that defendant's statement was voluntarily made. *People v Rode*, 196 Mich App 58, 69-70; 492 NW2d 483 (1992), rev'd on other grounds sub nom *People v Hana*, 447 Mich 325; 524 NW2d 682 (1994). There is no indication that any delay in complying with the statute was used as a tool to extract a confession. See *Good, supra* at 189. Defendant's custodial parent was not present, but defendant advised the officer that she was unavailable and there is no evidence that he requested her presence. See *Givans, supra* at 121. At the time of the interview, defendant was thirteen years and seven months old. He had an eighth grade education and could apparently read and write. He was questioned only once and the entire process took only one hour. The specific time period between defendant's arrest and his statement is unknown, but defendant does not claim that he was subject to a lengthy detention. There is no indication that defendant was other than in good health. He was not under the influence of illegal drugs, alcohol or medication, was not denied food, access to counsel or bathroom privileges, and was not threatened or promised anything in exchange for his statement. Under the totality of the circumstances, we find that the juvenile court did not clearly err in concluding that defendant's confession was voluntarily made.

Defendant next contends that the juvenile court erroneously admitted his confession in violation of the corpus delicti rule because the prosecutor failed to independently establish that he harbored the specific intent to commit a carjacking. Apart from the fact that defendant failed to preserve this issue by raising it below, *People v Carrick*, 220 Mich App 17, 19; 558 NW2d 242 (1996), it is without merit. The corpus delicti of a crime other than murder requires proof of the occurrence of the specific injury and some criminal agency as the source of the injury. *People v Konrad*, 449 Mich 263, 270; 536 NW2d 517 (1995). "Once this showing is made, a defendant's confession may be used to establish identity, intent, or aggravating circumstances." *People v Cotton*, 191 Mich App 377, 394; 478 NW2d 681 (1991). The victim's testimony showed that she was in lawful possession of a motor

vehicle and that someone took it from her in her presence by putting her in fear through the open display of a shotgun. Such evidence was sufficient to establish the corpus delicti of the offense. See *People v Davenport*, 230 Mich App 577, 579; 583 NW2d 919 (1998). Because defendant's identity and intent are not part of the corpus delicti, *Cotton, supra*, and carjacking is not a specific intent crime, *Davenport, supra* at 581, the prosecution was not required to prove that defendant specifically intended to commit a carjacking prior to the admission of his confession.

Defendant lastly contends that the prosecution failed to prove the elements of the crime charged beyond a reasonable doubt. In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing the evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of the crime. *Gould, supra* at 86.

The elements of carjacking are: (1) that the defendant took a motor vehicle from another person; (2) that the defendant did so in the presence of that person, a passenger, or another person in lawful possession of the vehicle; and (3) that the defendant accomplished the taking by force or violence, by threat of force or violence, or by putting the other person in fear. *Davenport, supra* at 579. Defendant did not commit this crime himself, but was charged as an aider and abettor and thus could be convicted and punished as a principal. *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995).

"The term 'aiding and abetting' includes all forms of assistance. The term comprehends 'all words or deeds which may support, encourage, or incite the commission of the crime.' The amount of aid or advice is immaterial so long as it had the effect of inducing the crime." *People v Usher*, 121 Mich App 345, 350; 328 NW2d 628 (1982) (citations omitted).

> 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. [*Turner, supra* at 568-569 (citations omitted).]

The defendant must have the same intent necessary to be convicted as a principal. When the case involves a general intent crime, the requisite intent is the intent to do the prohibited physical act. *People v Motor City Hosp & Surgical Supply, Inc*, 227 Mich App 209, 215; 575 NW2d 95 (1997).

In this case, that would entail the use of force or violence or fear to take another person's vehicle from that person's presence. *Davenport, supra* at 581.

The evidence showed that two of defendant's confederates committed a carjacking by taking the victim's car from her in her presence by putting her in fear through the open display of a shotgun. Defendant aided in the commission of the offense by watching out for the police while his two friends committed the crime. In his statement, defendant said he knew that his friends were going to steal a car. He watched them go over to a gas station to find a vehicle while he kept a lookout for the police. Once at the gas station, defendant's friends took a car from a woman who ran away from them. As the trial court noted, planning to steal a car from a place where the vehicle is attended by its owner is an indication that a use of force, violence or intimidation will be necessary to induce the owner to part with his or her vehicle. Thus, it was reasonable to infer that defendant intended to commit a carjacking or knew that his friends intended to commit that crime. Therefore, the evidence was sufficient to enable a rational trier of fact to find that the essential elements of the crime were proved beyond a reasonable doubt

Affirmed.

/s/ Gary R. McDonald
/s/ Michael J. Kelly
/s/ Mark J. Cavanagh