STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 11, 2001
v	No. 204447 Macomb Circuit Court
STANLEY DAVIDSON, JR., Defendant-Appellant.	LC No. 96-000370-FC

Before: Wilder, P.J., and Holbrook, Jr., and McDonald, JJ

Wilder, P.J., (*dissenting)*

I must respectfully dissent. I agree with most of the majority's analysis in this case. However, I disagree with the majority's conclusion that the jury was incurably confused about the requisite intent necessary for a finding of guilty on the unarmed robbery count, or that erroneous unarmed robbery instructions ""seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence."" *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999), citing *United States v Olano*, 507 US 725, 736-737; 113 S Ct 1770; 123 L Ed 2d 508.

While the trial court unfortunately stated somewhat confusingly that the jury could consider the less serious crime of unarmed robbery *plus* accessory after the fact, I would not find that this misstatement amounted to a conflating of the crimes of unarmed robbery and accessory after the fact. The jury verdict form quite clearly set forth unarmed robbery and accessory after the fact as separate crimes, and the verdict form instructed the jury to check only one box. Further, the trial court ordered copies of the instructions read to the jury after closing arguments to be made and provided in the jury room during deliberations. Thus, the jury had for its immediate and constant review during deliberations not only CJI2d 8.1 (Aiding and Abetting) and 8.6 (Accessory after the Fact), but also CJI2d 8.7 (Difference between Aider and Abettor and Accessory after the Fact). There is no claim that the instructions sent in with the jury contained the same misstatement.

I further disagree with the majority conclusion that the jury only intuitively understood it could find defendant guilty of unarmed robbery on an aiding and abetting theory, but was unlikely to have done so because the jury found the defendant not guilty of armed robbery on the aiding and abetting theory. On the second day of jury deliberations, the jury posed a question to

the trial court[1] which prompted the trial court and counsel to discuss the last use note to CJI2d 16.15 concerning the applicability of that instruction in cases involving aiding and abetting. It seems apparent that the jury had a laser focus on the aiding and abetting instruction and was diligently attempting to reconcile an aiding and abetting theory to what the facts showed defendant's involvement in the robbery to be.

Although there are some imperfections in the instructions provided to the jury, the instructions adequately protected the defendant's rights because the issues to be tried were fairly presented to the jury. See *People v Dumas*, 454 Mich 390, 563 NW2d 31 (1997). Accordingly, I would affirm.

/s/ Kurtis T. Wilder

[1] Unfortunately, this question was not read into the record buy the trial court.