

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ROGER DEAN STEIN,

Defendant-Appellee.

UNPUBLISHED

September 30, 2004

No. 255531

Calhoun Circuit Court

LC No. 04-000358-FH

Before: Borrello, P.J., and Murray and Hood, JJ.

PER CURIAM.

The prosecutor appeals by leave granted from the trial court's order quashing Count III (armed robbery, MCL 750.529) and Count IV (possession of a firearm during the commission of a felony, MCL 750.227b) of the felony information against defendant on the ground that there was insufficient evidence to bind him over for aiding and abetting two other men in robbing Anthony Harper. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The testimony at the preliminary examination established that when Kari Miller opened her apartment door slightly in response to loud knocking at approximately 3:00 a.m. on December 18, 2003, someone shoved a silver gun in the opening and forced the door wide open. Three men entered and one stuck the silver gun in Miller's face. She started screaming and was told to shut up. At least one of the men asked for her boyfriend, Anthony Harper, who was sleeping on a couch in the living room. Miller ran upstairs to respond to her crying three-year-old. Within a few minutes, defendant, who had the silver gun and whom Miller recognized despite his mask, followed her. He held her at gunpoint in her daughter's room and kept asking her where the money was. Harper testified that only two men came into the living room, one who was named "Richard" and one who had a black or dark colored gun, and that "Richard" asked for his money. Harper testified that he threw about \$300 on the floor and then fled when "Richard" bent down to pick up the money. Miller heard what sounded like her front door slamming, at which point defendant left the upstairs bedroom. A few minutes later, Miller went downstairs and ascertained that all three men and Harper had left the house. A little while later, defendant told Alvin Vaughan that he had "just robbed somebody."

The trial court concluded that there was insufficient evidence to bind defendant over on an aiding and abetting theory for the armed robbery of Harper and the related felony-firearm

charge. In *People v Moore*, 470 Mich 56, 63, 67-68; 679 NW2d 41 (2004), the Court summarized the principles applicable to an aiding and abetting analysis:

The purpose of the aiding and abetting statute is “to abolish the common law distinction between accessories before the fact and principals so that one who counsels, aids or abets in the commission of an offense may be tried and convicted as if he had directly committed the offense.” *People v Palmer*, 392 Mich 370, 378; 220 NW2d 393 (1974), citing *People v Gould*, 384 Mich 71, 77; 179 NW2d 617 (1970). The phrase “aids or abets” is used to describe any type of assistance given to the perpetrator of a crime by words or deeds that are intended to encourage, support, or incite the commission of that crime. *Palmer*, p 378.

“Aiding and abetting means to assist the perpetrator of a crime. An aider and abettor is one who is present at the crime scene and by word or deed gives active encouragement to the perpetrator of the crime, or by his conduct makes clear that he is ready to assist the perpetrator if such assistance is needed. [21 Am Jur 2d, Criminal Law, § 206, p 273.]”

* * *

The general rule is that, to convict a defendant of aiding and abetting a crime, a prosecutor must establish 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 that [the defendant] gave aid and encouragement.” *People v Carines*, 460 Mich 750, 768; 597 NW2d 130 (1999).

Based on the evidence, one could entertain a reasonable belief that defendant was guilty of aiding and abetting an armed robbery. See *People v Hudson*, 241 Mich App 268, 278; 615 NW2d 784 (2000) (setting forth the reasonable belief standard for a bindover). It is not disputed that “Richard” and the man with the dark-colored gun committed the armed robbery. However, defendant’s forced entry was an act that assisted the others in committing the crime in that it allowed the principals to gain entry. Defendant provided further assistance by taking control over Miller while the others carried out the robbery. Moreover, based on the mask, the demand to see Harper, the fact that the encounter with Harper was limited to a demand for money, and defendant’s remark after the fact that he had robbed someone, one could reasonably believe that defendant intended to rob Harper or, at a minimum, that he knew that this was the intent of the other perpetrators.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood