STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 17, 2005
v	No. 254004 Wayne Circuit Court
THOMAS JOHN WRIGHT, Defendant-Appellant.	LC No. 03-010325-01

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by a jury of extortion, MCL 750.213. This case involves the theft of a Krispy Kreme delivery truck and a subsequent threat to destroy the truck unless $100 was paid. The threat was communicated to the company dispatcher over a Nextel company telephone that was in the stolen truck. We affirm. This case is being decided without oral argument under MCR 7.214(E).

Defendant first argues that his statement to the police should have been suppressed because it was the result of an illegal stop and arrest. We disagree. This Court reviews the trial court's findings of fact with regard to a motion to suppress for clear error, but we review the ultimate decision de novo. *People v Galloway*, 259 Mich App 634, 638; 675 NW2d 883 (2003).

At around 4:00 a.m. on August 25, 2003, two Detroit police officers were dispatched to the intersection of Warren Road and Southfield Road. The officers were looking for a white male who was believed to have been communicating with the Krispy Kreme dispatcher. At the motion hearing, one of the responding officers testified that they were looking for this man because "[h]e had some merchandise that belonged to the company." The officers had been informed that the man they were looking for would be at a gas station in the area. The testifying officer stated that there are three gas stations in the area and that he and his partner checked all three. The officer stated that defendant was the only white male in the area. As the police approached in their marked police car, defendant looked in their direction and then immediately entered a pickup truck and drove away.

Based on the above, we conclude that the police had reasonable suspicion to stop defendant's vehicle. "Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or 'hunch,' but less than the level of suspicion required for probable cause." *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996). "The detaining officer

must have had a particularized and objective basis for the suspicion of criminal activity." *Id*. at 98-99. Defendant was the only person at the location who matched the limited description the police had of a suspect in the theft of the delivery truck. Additionally, defendant attempted to leave the area when he saw the police approaching. "While flight at the approach of the police, by itself, does not support a reasonable suspicion to support an investigative stop, it is a factor to be weighed in the consideration of the totality of the circumstances." *People v Shields*, 200 Mich App 554, 558; 504 NW2d 711 (1993). Under the circumstances, we find no error with regard to the stop of the vehicle.

Defendant also argues that he was arrested without probable cause. We again disagree. One of the arresting officers testified that after the stop, he saw in plain view bags and boxes of donuts in the bed of defendant's truck and a Nextel telephone on the seat of the truck. "The plain view doctrine allows police officers to seize, without a warrant, items in plain view if the officers are lawfully in a position from which they view the item, and if the item's incriminating character is immediately apparent." *Champion, supra* at 101. The testifying officer was in a place where he lawfully could be when he viewed the donuts and the telephone. Additionally, the incriminating nature of the donuts and the telephone, which was marked with the stolen truck's radio number, was immediately known to the officer. Because the police had reasonable suspicion to stop defendant's vehicle and probable cause to arrest defendant based on items in plain view, the trial court did not err in denying the motion to suppress defendant's statement to the police.

We also reject defendant's argument that the trial court erroneously instructed the jury concerning the intent element of aiding and abetting. Although defendant objected to the trial court's instruction, he did so on a different basis than he now advances on appeal. Thus, the issue has not been properly preserved. *People v Bulmer*, 256 Mich App 33, 35; 662 NW2d 117 (2003) (observing that "an objection based on one ground at trial is insufficient to preserve an appellate attack based on a different ground."). Therefore, we review this issue for plain error affecting substantial rights. *People v Rodriguez*, 251 Mich App 10, 32; 650 NW2d 96 (2002).

The trial court gave the challenged instructions after the jury had been deliberating and came back with a question about whether being part of an extortion scheme is the same as making a extortion threat. Defendant objected to the trial court's giving any instruction on aiding and abetting. The trial court instructed the jury using the commentary to the aiding and abetting and mere presence instructions[1] but did not use the words "aiding and abetting." We conclude that the trial court's answer to the jury's question did not constitute plain error.

"Jury instructions must be read as a whole and not extracted piecemeal in an effort to establish error mandating reversal." *People v Lipps*, 167 Mich App 99, 106-107; 421 NW2d 586 (1998). An appellate court should not reverse because of somewhat imperfect instructions, as long as they fairly presented the issues to be tried and protected a defendant's rights. *People v Kurr*, 253 Mich App 317, 327; 654 NW2d 651 (2002). Defendant argues that the trial court did not inform the jury of the proper specific intent required for aiding and abetting. However,

[1] See CJI 2d 8.1 and 8.5.

during the initial jury instructions, the trial court informed the jury of the intent necessary to be convicted of extortion. Then, in answering the jury's question, the trial court informed the jury that "[t]he law says basically that anyone who intentionally assist[s] someone else in committing a crime is as guilty as the person who directly commits it." The court further informed the jury that the person had to intend to help the principal commit the crime and that mere presence or mental approval would not be sufficient to find a person guilty.

In reviewing the jury instructions as a whole in the context of the evidence adduced at trial, we conclude that the trial court properly instructed the jury. There was evidence that a crime had been committed by someone, *People v Mann*, 395 Mich 472, 478; 236 NW2d 509 (1975), and that if defendant had not acted as the principal, he had been involved in a "concert of action" with the principal. See *id.* at 475. A threat had been made to blow up the truck if the company dispatcher did not arrive at the designated location and deliver $100. See MCL 750.213. That threat had been made over a telephone that had been in the stolen truck and was found in defendant's possession. There was also evidence of two male voices having been heard over the stolen truck's telephone. Thus, there was evidence that defendant participated in the extortion scheme either as a principal or an aider and abettor. See *People v Smielewski*, 235 Mich App 196, 208-209; 596 NW2d 636 (1999). A trial "court need not instruct the jurors that they must unanimously agree on which role the defendant played." CJI2d 8.1, commentary, citing *Smielewski, supra* at 208-209.

Viewing the jury instructions and the factual situation as a whole, we conclude that the jury instructions fairly presented the issues to be tried and that defendant's substantial rights were not violated by the trial court's answer to the jury's question.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Patrick M. Meter