

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ISRAEL FLORES,

Defendant-Appellant.

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UNPUBLISHED

May 20, 2008

No. 275983

Wayne Circuit Court

LC No. 06-002848-01

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

PER CURIAM.

Defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to one to ten years' imprisonment for the assault with intent to do great bodily harm less than murder conviction and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is that there was insufficient evidence to support his conviction of assault with intent to do great bodily harm less than murder. We disagree. When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW 2d 370 (1999). The evidence is viewed in the light most favorable to the prosecutor, and this Court determines whether a rational trier of fact could find that the essential elements of the crime charged were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Defendant and the victim were members of rival gangs. When police officers arrived on the scene of the shooting, the injured victim came running toward them, exclaiming that he had been shot. The victim then pointed out defendant's vehicle as the car from which the shots were fired. The officers pursued the vehicle, eventually stopping it at gunpoint. Defendant exited the vehicle and fled. An officer, who observed that defendant was holding his waistband as he ran, pursued him on foot. The officer recovered the handgun used in the shooting from a dumpster which defendant ran past.

Defendant argues that the prosecutor failed to prove beyond a reasonable doubt that defendant either shot the victim, or in the alternative, aided and abetted the shooter. Defendant indicates that because the trial judge was unable to determine whether defendant was the actual

shooter, the principal of the crime was not identified, and therefore, the only basis for defendant's conviction would be that he was an aider and abettor. According to defendant, the trial judge merely speculated that defendant entered a neighborhood where members of his rival gang were present, with the intent that a shooting would occur. Defendant asserts that he and his companions drove through that particular area for the legitimate reason of picking a friend up from school, and that there was insufficient evidence to show he acted in concert with his companions by seeking out rival gang members in response to alleged tensions between the gangs.

The elements of assault with intent to do great bodily harm less than murder are: (1) an attempt or threat with force or violence to do corporal harm to another, and (2) an intent to do great bodily harm less than murder. *People v Parcha*, 227 Mich App 236, 239; 515 NW2d 316 (1997). It was undisputed that the victim was shot by someone in the vehicle in which defendant was riding. Conflicting evidence was presented regarding whether defendant was the actual shooter. Nevertheless, the trial judge found that if defendant were not the shooter, he would still be guilty of the same offense that the principal would be guilty of because he acted in concert with his companions and as an aider and abettor.

Defendant's appeal centers on the point that there was insufficient evidence to convict him of this crime based solely on an aiding and abetting theory. The elements of aiding and abetting are: (1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement which 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. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Aiding and abetting includes all types of assistance given to a principal and all words or acts that may support the commission of a crime. *Id.* Furthermore, an aider and abettor's state of mind may be inferred from surrounding circumstances, including a close association between the principal and the defendant, the defendant's participation in planning or carrying out the crime, and the defendant's flight from the scene. *Id.* at 757-758.

Defendant and the victim were members of rival gangs with a violent history. After previous shooting incidents between these gangs, defendant entered an area where rival gang members were present, while fully aware that his companion was armed with a handgun. Defendant exchanged gang signs with rival gang members. Shots were fired from the vehicle in which defendant was riding. Defendant threw the bullet casings out of the vehicle during the incident. When officers arrived on the scene, defendant exited the vehicle and ran from officers, while holding his waistband. The officer who pursued defendant on foot found the handgun in a dumpster which defendant ran past. The victim initially implicated defendant as the shooter, and tests later revealed gunshot residue on defendant.

Defendant asserts that after the shooting occurred, he took the handgun away from his companion, fled with it, and disposed of it in the dumpster. These actions, according to defendant, would qualify him as only an accessory after the fact, and therefore, he could not be

convicted under the aiding and abetting statute, MCL 767.39.<sup>1</sup> We disagree. The purpose of the aiding and abetting statute is to do away with the common law distinction between accessories before the fact and principals so that an aider and abettor can be tried and convicted as if he had directly committed the offense. *People v Moore*, 470 Mich 56, 63; 679 NW2d 41 (2004). The prosecutor presented ample evidence to show that defendant was either the actual shooter, or at least had sufficient involvement before and during the incident such that he was guilty as an aider and abettor under MCL 767.39. And defendant's actions after the shooting, including flight, can properly be considered with respect to state of mind and intent. *Carines, supra* at 757-758. Our Supreme Court has affirmed a conviction on a theory of aiding and abetting when the defendant acted in silent unison, remained in a position to render assistance if needed, and took actions to allow the crime to be completed. *People v Palmer*, 392 Mich 370, 379; 220 NW2d 393 (1974). In the present case, defendant acted with his companions when he entered an area where rival gang members were present with a gun in his car, flashed gang signs at them, personally handled the gun, threw out bullet casings during the shooting, and hid the gun while running from officers.

It is for the trier of fact to determine what inferences can fairly be drawn from the evidence presented and to determine the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). And in this bench trial those determinations were made by the trial judge. Viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence for the trial judge to find that the essential elements of the crime were proven beyond a reasonable doubt and that defendant was guilty of assault with intent to do great bodily harm less than murder either as a principal or as an aider and abettor.

Affirmed.

/s/ Pat M. Donofrio  
/s/ David H. Sawyer  
/s/ William B. Murphy

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<sup>1</sup> MCL 767.39 provides that "[e]very person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense."