

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH LAMONT JOHNSON,

Defendant-Appellant.

UNPUBLISHED

September 18, 2008

No. 277904

Oakland Circuit Court

LC No. 2006-211949-FH

Before: Schuette, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of conspiracy to commit uttering and publishing, MCL 750.157a; MCL 750.249, uttering and publishing, MCL 750.249, and forgery of a driver's license with the intent to aid in the commission of an offense punishable by imprisonment for ten or more years, MCL 257.310(7)(a). He was sentenced, as a fourth habitual offender, MCL 769.12, to 3 to 20 years' imprisonment for each conviction. We affirm. We decide this case without oral argument under MCR 7.214(E).

Defendant argues on appeal that the evidence is insufficient to sustain convictions for uttering and publishing and conspiracy to commit uttering and publishing. We disagree.

A claim of insufficiency of the evidence invokes a defendant's constitutional right to due process of law, which we review de novo on appeal. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). "[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

"Uttering and publishing consists of three elements: '(1) knowledge on the part of the defendant that the instrument was false; (2) an intent to defraud; and (3) presentation of the forged instrument for payment.'" *Hawkins, supra* at 457, quoting *People v Shively*, 230 Mich

App 626, 631; 584 NW2d 740 (1998); see also MCL 750.249. The prosecution of defendant for the crime of uttering and publishing relied, in part, on a theory of aiding and abetting.

“Aiding and abetting” describes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds that might support, encourage, or incite the commission of a crime 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. [*People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (quotation and citation omitted).]

Defendant argues that the trial record is devoid of any evidence, other than mere speculation, on the issue of whether defendant aided and abetted others in the perpetration of the crime. This argument fails. First, the facts support an inference that Frank Davis and Raymond Davis¹ were with defendant and committed the crime of uttering and publishing. Neither Frank nor Raymond were employed by Lourdes Campus Assisted Living (“Lourdes”), both possessed identification cards with change of address stamps, and the change of address stamps matched the addresses on the fraudulent checks. Under these circumstances, it is reasonable to infer that Frank and Raymond both knew that the payroll checks were fraudulent and intended to defraud by presenting the checks at Meijer, thereby committing the crime.

Second, viewing the facts in a light most favorable to the prosecution, there is sufficient evidence for a jury to find that defendant assisted Frank and Raymond in the commission of the crime. Defendant possessed a social security card and identification not in his name. In addition, on the back of the identification card was a suspect change of address stamp, similar to the change of address stamp on the identifications presented by Frank and Raymond. Defendant also traveled with Frank and Raymond in the same van that was used only a few days prior in a separate attempt to cash a Lourdes payroll check at Meijer. Further, defendant possessed the check Frank attempted to cash at Meijer. Defendant even hid the Lourdes payroll checks and check stubs in his sock. The checks in defendant’s sock all had the same check number and were made out to Frank and Raymond. In light of this, it is reasonable to infer that defendant performed acts or gave encouragement, and he intended the commission of the crime or had knowledge that Frank or Raymond intended the commission of the crime at the time he gave aid or encouragement. Moreover, defendant’s intention to commit the crime can be inferred from his statement in jail that he will get one to three years for this offense. Therefore, sufficient evidence existed to support defendant’s conviction of uttering and publishing under an aiding and abetting theory.

¹ The record does not indicate any familial relationship between Frank Davis and Raymond Davis.

Defendant also claims there is insufficient evidence to show he conspired to commit the crime of uttering and publishing. This argument has no merit. A conspiracy is a voluntary mutual agreement between two or more persons to commit a criminal act. *People v Blume*, 443 Mich 476, 481; 505 NW2d 843 (1993). The prosecutor must prove that the parties “specifically intended to further, promote, advance, or pursue an unlawful objective.” *People v Justice (After Remand)*, 454 Mich 334, 347; 562 NW2d 652 (1997). A conspiracy is complete upon formation of the agreement; therefore, no positive act in furtherance of the conspiracy must be shown to support a conviction. *People v Cotton*, 191 Mich App 377, 393; 478 NW2d 681 (1991). Proof of a conspiracy can be drawn from the circumstances, acts, and conduct of parties during the crime, and inferences are permissible. *Justice, supra* at 347.

Taken in a light most favorable to the prosecution, a reasonable juror could infer that defendant, Frank, Raymond, and Jill Perry made a voluntary mutual agreement to utter and publish. As noted above, defendant traveled in the van used only days before his arrest in a separate attempt to cash a Lourdes payroll check. It can be inferred that defendant and others pursued the unlawful objective of uttering and publishing because he hid in his sock the check Frank attempted to cash in Meijer. Defendant not only had the checks made out to Frank and Raymond, but also two check stubs made out to Raymond. Defendant possessed identification that had a change of address stamp on the back similar to Frank’s and Raymond’s identification cards with address stamps that matched the bad checks. Also creating the inference of defendant’s involvement in a conspiracy is his admission in jail that he was going to do one to three years for this offense and his advice to Perry not to talk to make things easier. From this, it is reasonable to infer that defendant and the other parties attempting to cash Lourdes payroll checks made a voluntary agreement in furtherance of the goal to commit the crime of uttering and publishing.

Affirmed.

/s/ Bill Schuette
/s/ Brian K. Zahra
/s/ Donald S. Owens