STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 21, 2008
v	No. 278948 Wayne Circuit Court
JERVON MIQUEL COLEMAN, Defendant-Appellant.	LC No. 07-004178-02

Before: Schuette, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of three counts of first-degree felony murder, MCL 750.316(1)(b), three counts of second-degree murder, MCL 750.317 (vacated at sentencing), and one count of assault with intent to commit murder, MCL 750.83. Defendant was acquitted of first-degree premeditated murder, MCL 750.316(1)(a), felony-firearm, MCL 750.227b, and felon in possession of a firearm, MCL 750.224f. We affirm.

Defendant was prosecuted after being implicated, along with his accomplice Marcel Mills, in a triple murder and an accompanying assault. The three murder victims, Kristal Leonard, Raymond Anderson, and Lejuan Besant, died from multiple gunshot wounds. The testimony of the assault victim, Evelyn Stewart, who identified defendant and who survived by hiding in the basement of Besant's home where the criminal episode occurred, formed the chief basis of the prosecutor's case against defendant. The prosecutor proceeded under the theory that defendant acted as either a principal or an aider and abettor with respect to all of the crimes.

On appeal, defendant argues that there was insufficient evidence to support the convictions, where the meager circumstantial evidence relied on by the prosecution was too weak, uncertain, and speculative. More specifically, defendant maintains that the evidence was insufficient to show that he was the principal or acted as an aider and abettor in regard to Besant's murder, where the evidence indicated that Mills shot Besant, not defendant, especially considering the acquittals on the felony-firearm and felon in possession charges, where there was no evidence of a larceny, the underlying felony for purposes of the felony murder charges, and where there was only evidence of defendant's presence at the scene and perhaps passive acquiescence, but no evidence of actual aid, assistance, and encouragement. Defendant also asserts that, for these same reasons, the evidence was insufficient to sustain the murder convictions as to Leonard and Anderson and the assault conviction with respect to Stewart.

We review claims of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. *Id.* at 514-515. Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). "'[C]ircumstantial evidence is oftentimes stronger and more satisfactory than direct evidence.'" *Wolfe, supra* at 526 (citation omitted). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).[1]

Pursuant to MCL 750.316(1)(b), the crime of first-degree felony murder requires the prosecution to prove (1) the killing of a human being, (2) with intent to kill, to do great bodily harm, or to create a very high risk of death or great bodily harm, knowing that death or great bodily harm was the probable result, (3) while committing, attempting to commit, or assisting in the commission of one of the enumerated felonies. *Carines, supra* at 758-759. Here, the underlying crime is larceny. The crime of larceny requires proof of the following elements: "(1) the taking of someone else's property without consent, (2) movement of the property, (3) with the intent to steal or permanently deprive the owner of the property, and [proof that] (4) the property was taken from the person or from the person's immediate area of control or immediate presence." *People v Perkins*, 262 Mich App 267, 271-272; 686 NW2d 237 (2004), aff'd 473 Mich 626 (2005). For purposes of felony murder, an attempted larceny would suffice, and, under the attempt statute, MCL 750.92, an attempt consists of "(1) an attempt to commit an offense prohibited by law, and (2) any act towards the commission of the intended offense." *People v Thousand*, 465 Mich 149, 164; 631 NW2d 694 (2001). Assault with intent to commit murder requires (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Brown*, 267 Mich App 141, 147-148; 703 NW2d 230 (2005).

To convict a defendant under an aiding and abetting theory pursuant to MCL 767.39, the prosecutor must prove that (1) the crime charged was committed by the defendant or another person, (2) the defendant gave encouragement or performed acts that assisted in the commission of the crime, and (3) the defendant intended that the crime be committed or had knowledge that the principal intended its commission when the defendant gave aid and encouragement. *People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006). Aiding and abetting includes any and all forms of assistance. *People v Lawton*, 196 Mich App 341, 352; 492 NW2d 810 (1992). "The quantum of aid or advice is immaterial as long as it had the effect of inducing the crime." *Id.* However,

[1] These principles are equally applicable in the context of an argument that the court erred in denying a motion for directed verdict, which is the basis of defendant's sufficiency claim. *People v Aldrich*, 246 Mich App 101, 122-123; 631 NW2d 67 (2001).

mere presence at the crime scene, even with knowledge that an offense is about to be committed, is insufficient to establish that a defendant aided or assisted in the commission of the crime. *People v Norris*, 236 Mich App 411, 419-420; 600 NW2d 658 (1999). An actor's intent may be inferred from the facts and circumstances, and minimal circumstantial evidence is sufficient to show a defendant's state of mind. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

The evidence reflected, according to Stewart's testimony, that defendant entered the home with Mills and that Mills was wearing all black clothing with a ski mask that covered his nose and mouth. Either Mills or defendant asked to speak with Besant in the back, and Besant agreed. Defendant, together with Mills and Besant, went to a room in the back of the house. Almost immediately, Stewart heard six gunshots that sounded like they were being fired from different guns. Evidence established that Besant had been shot ten times, and three of the bullets were from a .38-caliber firearm, but the remaining bullets were too damaged to be linked to any particular weapon. Eight spent .38-caliber shell casings were found in the backroom where Besant's body was discovered, along with a live bullet corresponding to a .38-caliber firearm. The evidence suggested that the .38-caliber firearm, which type of firearm typically has the capacity to fire five or six rounds, must have been reloaded before being used to further riddle Besant with bullets. The police, however, never recovered a .38-caliber firearm. The backroom was described as follows by an investigating officer:

> I saw that the room was in complete disarray. The mattress had been askewed from the box springs, dresser drawers had been removed, there's just miscellaneous items spread out all through the room.

The officer also testified that there was a bloody shoeprint on top of a "pulled-out, upside down dresser drawer."

According to Stewart, after she heard the gunshots from the backroom, Mills reappeared and approached her, Anderson, and Leonard, pointing the gun at Anderson and pulling the trigger. The gun jammed, Anderson and Leonard began to struggle with Mills, and Stewart ran into the basement and hid underneath the basement steps. Stewart then heard footsteps inside the house and gunshots coming from outside the home. In response to the prosecutor querying her whether anyone then came down to the basement looking for her, Stewart stated:

> Yes, they came to the steps, but they didn't come all the way down. All I seen were the shoes and the pants. That was it. It never came all the way down. Then I heard one of them say we have to get out of here. So they ran out. I could hear them running out of the house.

A bloody shoe print was later found on the floor near the door going to the basement.

The police later found the dead bodies of Leonard and Anderson just outside the home. Leonard had been shot twice and Anderson three times, all with a .32-caliber weapon. Spent .32-caliber shell casings were found outside the house, along with a live .32-caliber bullet and a chain necklace. Subsequently, after Stewart identified defendant in a photographic array, Mills and defendant were arrested. Mills directed police to a location where, according to Mills, he had buried a gun used in the incident, and where he had hidden bloody clothes. At the location,

police found a .32-caliber firearm, burnt jeans covered with blood, the burnt remnants of other clothing and boots, a black-hooded sweatshirt, and $300. DNA from the jeans matched Besant's blood, and all of the .32-caliber bullets and spent shell casings found at the scene were determined to have been fired from the recovered .32-caliber gun.

From this circumstantial evidence, a juror could reasonably infer that defendant had either shot Besant himself or aided and abetted in the shooting of Besant with the requisite intent, considering that there was evidence that defendant came into the home freely accompanied by Mills, that defendant was seen going into the backroom with Mills and Besant shortly before gunfire exploded from that room, that Besant was killed by ten bullet wounds, that a .38-caliber weapon was used and Mills was found to only have hidden a .32-caliber firearm, that time was taken to reload the .38-caliber weapon, that Mills exited the backroom unscathed, ready to shoot Leonard, Anderson, and Stewart, and that defendant and Mills fled the scene together. As noted by this Court in *People v Anderson*, 166 Mich App 455, 475; 421 NW2d 200 (1988), a jury question of aiding and abetting can be created by evidence of a close association between a defendant and the principal actor, as well as evidence of flight after the crime.[2] A juror could also reasonably infer from the circumstantial evidence that the murders were perpetrated during the commission or attempted commission of a larceny, given the ransacked nature of the backroom, including the bloody shoeprint on the tossed dresser drawer, and the $300 later found with other materials directly linked to the crimes. This evidence, together with the evidence of defendant entering the home accompanied by Mills, who wore a ski mask that partially hid his face, their entry into the backroom with Besant, the circumstances of the shooting, ballistics, and evidence of joint flight from the residence, all support a finding that, minimally, defendant aided and abetted a larceny or attempted larceny with the requisite intent. Further, for all of the evidentiary reasons cited in this paragraph, a juror could reasonably infer that defendant aided and abetted Mills in the murders of Leonard and Anderson with the requisite intent and that defendant aided and abetted Mills in the assault against Stewart with the requisite intent. This is especially true where defendant clearly assisted in setting into motion these crimes by first participating in the shooting of Besant and then afterward fleeing in unison with Mills. As stated in *Robinson, supra* at 3, "a defendant who intends to aid, abet, counsel, or procure the commission of *a* crime, is liable for that crime as well as the natural and probable consequences of that crime." (Emphasis in original.) The evidence certainly went beyond defendant merely being present at the crime scene. There was sufficient evidence to sustain the convictions.

Finally, defendant, relying on the criminal case of *In re Ferguson*, 78 Mich App 576; 261 NW2d 8 (1977), argues that the trial court should have granted his motion for directed verdict following the prosecutor's opening statement, where the statement failed to establish the existence of any crime having been committed by defendant. We first note that *In re Ferguson* was decided in 1978 and that MCR 6.419, a rule of criminal procedure regarding motions for directed verdicts, was adopted in October 1989. MCR 6.419 makes clear that the earliest a motion for directed verdict can be considered is after the presentation of the prosecutor's case-in-

[2] With respect to defendant's argument relative to the acquittals on the firearm charges, it is well-established that juries may render inconsistent verdicts. *People v Vaughn*, 409 Mich 463, 466; 295 NW2d 354 (1980).

chief, and this is consistent with the principle that motions for directed verdict require a review of the evidence. See *People v Aldrich*, 246 Mich App 101, 122-123; 631 NW2d 67 (2001). Assuming that such a motion can be considered at the end of a prosecutor's opening statement, the statement here was sufficient to set forth the charged crimes.

Affirmed.

/s/ Bill Schuette
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald