

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ZACHARY ANTHONY PROUT,

Defendant-Appellant.

UNPUBLISHED

January 28, 2010

No. 289900

Oakland Circuit Court

LC No. 2008-222432-FH

Before: Donofrio, P.J., and Meter and Murray, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree home invasion, MCL 750.110(a)(2), and larceny of a firearm, MCL 750.357b. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of 8-1/2 to 30 years for each conviction. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted of breaking into a residential home over the Labor Day weekend of 2007, while the homeowners were vacationing. A window was broken, and guns, knives, jewelry, and electronic items were missing. Defendant lived next door to the home. The primary evidence against defendant was the testimony of two men who asserted that defendant was involved with them in committing the crime.

Christopher Dunne and Jake Stempien both testified that they were at Stempien's house on the night before the break-in. According to Dunne, defendant told them that he knew where they could "hit a lick," meaning commit a robbery. Defendant explained that the house was next to his parent's house, and he knew that the owners were out of town. The three agreed to go to the house to "hit a lick." According to Dunne, after devising the plan, they became intoxicated. Because of Dunne's intoxication, he did not remember either leaving to commit the break-in or going into the house, but he and Stempien both left physical evidence of their presence. When Dunne woke up at Stempien's house the next day, defendant and the stolen items were still there.

Stempien testified that he borrowed a neighbor's car and parked at a house that defendant knew about. Stempien broke a window and cut his finger. Dunne crawled through the window and opened a sliding door. Defendant went inside, after which he and Dunne carried out items from inside and put them in the trunk. After multiple trips from the house to the car, they returned to Stempien's home and put the items in the basement. Other witnesses provided

information concerning how defendant discovered that the homeowners would be out of town and a neighbor's discovery of the break-in.

Over defendant's objection, the trial court instructed the jury on aiding and abetting. On appeal, defendant does not dispute that there was sufficient evidence, if believed, to establish his guilt as a direct principal. He argues, however, that there was insufficient evidence to establish his guilt under an aiding and abetting theory. Therefore, defendant argues, because the jury did not specify on which theory its verdict was based, he is entitled to a new trial.

When reviewing a challenge to the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

The necessary elements to support a conviction under an aiding and abetting theory are: (1) the defendant or some other person committed the charged crime, (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 the aid and encouragement. *People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006).

The evidence clearly established that the charged crimes were committed by defendant or some other person. Evidence was also presented that defendant performed acts or gave encouragement that assisted in the commission of the crime by informing Stempien and Dunne that the home would be unoccupied and suggesting that they "hit a lick." There was also evidence that defendant helped carrying items out of the home. A rational trier of fact could reasonably infer that, at the time defendant gave the aid or encouragement, he intended the commission of the crime or knew that the principal intended its commission.

Defendant asserts that there was insufficient evidence that he was *only* an aider and abetter because Stempien testified that defendant was a principal and Dunne was too intoxicated to remember the crime. However, Stempien and Dunne agreed that defendant suggested the break-in and provided information that the homeowners were out of town so that the break-in could be completed. According to Stempien, defendant also told them that there would be guns inside the residence. Although Stempien's testimony also supports a finding that defendant participated in the home invasion as a direct principal, the jury was not obligated to believe all aspects of his testimony. The evidence that Stempien and Dunne committed the offenses and that defendant performed acts that assisted them was sufficient to prove that defendant was liable as an aider and abettor, if not a direct principal. Cf. *People v Smielewski*, 235 Mich App 196, 208-209; 596 NW2d 636 (1999).

Affirmed.

/s/ Pat M. Donofrio
/s/ Patrick M. Meter
/s/ Christopher M. Murray