

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALEXANDER JEVONTE ABRON,

Defendant-Appellant.

UNPUBLISHED

June 24, 2010

No. 291621

Kent Circuit Court

LC No. 08-007939-FC

Before: FORT HOOD, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Defendant, Alexander Jevonte Abron, appeals as of right his February 18, 2009, jury trial conviction of assault with intent to rob while armed, MCL 750.89. Defendant was also charged with conspiracy to commit robbery while armed, MCL 750.157a, and accessory after the fact to a felony, MCL 750.505. Defendant was acquitted of those charges. Defendant was sentenced as a third habitual offender on March 24, 2009, to 20 to 60 years' imprisonment. We affirm.

Defendant first contends on appeal that the prosecution failed to present sufficient evidence in support of his conviction for assault with intent to rob while armed. We disagree.

In reviewing a challenge based on the sufficiency of the evidence, this court conducts a de novo review. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). A conviction will be affirmed when, viewing the evidence in the light most favorable to the prosecutor, a rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). "All conflicts with regard to the evidence must be resolved in favor of the prosecution. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005) (internal citations omitted).

"The elements of assault with intent to rob while armed are: (1) an assault with force and violence; (2) an intent to rob or steal; and (3) the defendant's being armed. Because this is a specific intent crime, there must be evidence that the defendant intended to rob or steal." *People v Cotton*, 191 Mich App 377, 391; 478 NW2d 681 (1991). In the present case, the prosecution argued that defendant was guilty of the charged offenses because he aided and abetted the principle offender. "A person who aids or abets the commission of a crime may be convicted and punished as if he directly committed the offense." *People v Izarraras-Placante*, 246 Mich

App 490, 495-496; 633 NW2d 18 (2001). In order to support a conviction on a theory of aiding and abetting, the prosecution must show:

(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. [*Id.* quoting *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995).]

In the present case, the prosecution presented sufficient evidence to allow a rational trier of fact to conclude that defendant aided and abetted the crime of assault with intent to commit robbery while armed. On appeal, defendant argues that since there was no direct evidence of defendant's active participation in the crime with knowledge of the principal's intent to commit the crime or the identity of the principal, the jury was precluded from convicting him of the charged crime. Such an argument is inconsistent with Michigan law. As stated in *Wilkins, supra*, a jury is permitted to convict a defendant on the basis of circumstantial evidence and the inferences drawn from that evidence. The testimony at trial demonstrated that defendant, drove his mother's van to the Capri III bookstore with his cousin, Jermaine Robinson, as his passenger. Defendant, by his own admission, entered the store alone, remained in the store for several minutes and left after making a purchase. The sole employee working at the store that day, Roger Davenport, testified that moments after defendant left the store, a masked gunman entered the store through the backdoor and attempted to rob it. Additionally, eyewitnesses outside the store observed a man sitting in a van that van fit the description of the one driven by defendant. The man sitting in the van was slouching down in his seat and quickly drove off after a man holding a gun entered his vehicle. Days later, defendant was arrested when he was pulled over in a van similar to the one observed by eyewitnesses. Robinson was not apprehended. While discussing the crime with police, defendant gave several inconsistent accounts of the events in question. In one version he acknowledged both that Robinson had previously committed an armed robbery and he saw Robinson with a gun on the evening after the robbery. In another version he denied Robinson was ever with him. In a later version, defendant stated that when he returned to the van from the Capri, Robinson was not there, and that he later returned from an unknown destination.

Viewing the evidence in the light most favorable to the prosecution, the jury could have concluded that Robinson was the individual who attempted to rob the store and that defendant was the individual driving the van. As the trial court stated in response to the motion for directed verdict, it is reasonable to conclude that defendant drove Robinson to the store in order to aid him. Likewise, it is reasonable to infer that defendant entered the store in order to scout it out before Robinson entered behind him and that defendant slouched down in the van during the attempted robbery in order to avoid being identified. Under that reasonable scenario, which is consistent with the evidence presented at trial, defendant had knowledge of Robinson's intentions and intended to assist him with the commission of an armed robbery. Although there is no direct evidence that defendant was aware of Robinson's intentions, "[i]ntent may be inferred from all the facts and circumstances." *People v Welford*, 189 Mich App 478, 480; 473 NW2d 767 (1991). The evidence, when viewed in the light most favorable to the prosecution,

permitted such an inference. Consequently, the prosecution presented sufficient evidence to support a conviction on a theory of aiding and abetting. Defendant is not entitled to relief.

Next, defendant asserts that the trial court erred in denying his motion to quash and binding him over for trial. We disagree.

This court reviews a denial of a motion to quash the information for an abuse of discretion. *People v Stone*, 463 Mich 558, 561; 621 NW2d 702 (2001). The abuse of discretion standard recognizes that in certain instances, there are multiple principled and reasoned outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). “When the trial court selects one of these principled outcomes, the trial court has not abused its discretion and, thus, it is proper for the reviewing court to defer to the trial court’s judgment.” *Id.*

This Court will not address whether the trial court erred in denying the motion to quash regarding the charges of conspiracy to commit armed robbery and accessory after the fact to a felony because the issue is moot. “An issue is moot if an event has occurred that renders it impossible for the court, if it should decide in favor of the party, to grant relief.” *People v Billings*, 283 Mich App 538, 548; 770 NW2d 893 (2009), quoting *Michigan Nat’l Bank v St Paul Fire & Marine Ins Co*, 223 Mich App 19, 21; 566 NW2d 7 (1997). Even if the court should have granted the motion to quash, the jury subsequently acquitted defendant of those charges. Ultimately, defendant’s legal rights were not impacted by the denial of the motion to quash the charges of conspiracy to commit armed robbery and accessory after the fact. Therefore, this Court is incapable of granting defendant any relief. However, because defendant was convicted of assault with intent to commit robbery while armed, his challenge of the denial of the motion to quash is not moot regarding that charge.

As to the other charge, the trial court denied defendant’s motion to quash after determining that there was sufficient evidence presented at the preliminary examination to bind defendant over for trial. If the evidence presented at the preliminary examination establishes probable cause exists that the defendant committed the charged offense, the defendant must be bound over for trial. *People v Orzame*, 224 Mich App 551, 558; 570 NW2d 118 (1997). The prosecution must present “some evidence from which each element of the crime may be inferred.” *People v Reigle*, 223 Mich App 34, 36-37; 566 NW2d 21 (1997). As stated above, “[t]he elements of assault with intent to rob while armed are: (1) an assault with force and violence; (2) an intent to rob or steal; and (3) the defendant’s being armed. Because this is a specific intent crime, there must be evidence that the defendant intended to rob or steal.” *Cotton*, 191 Mich App at 391. “Probable cause requires a quantum of evidence ‘sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief’ of the accused’s guilt.” *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003) (quoting *People v Justice*, 454 Mich 334, 344; 562 NW2d 652 (1997)).

The evidence presented during the preliminary examination was substantially similar to the evidence that was ultimately presented at trial. At the examination, Davenport described the events in question, including defendant’s entry into the store, his purchase and exit and the subsequent attempted robbery by a masked individual. Harvey Nauta described seeing a gunman running in the area of the Capri and entering a nearby van, which was being driven by a second individual. Detective Patrick Needham then testified that defendant was arrested while driving a van that fit the description of the vehicle used in the robbery. When interviewed, defendant

acknowledged having been at the Capri with his cousin. He further admitted that he later discovered that his cousin was in possession of a firearm. Defendant provided police with multiple, conflicting accounts of the events in question.

Based on the above-described evidence, the trial court did not abuse its discretion in binding defendant over for trial and denying his subsequent motion to quash. Defendant asserts that he could not have been bound over based on a theory of aiding and abetting because the prosecution failed to demonstrate that he possessed the requisite intent or knowledge. “Intent may be inferred from all the facts and circumstances.” *Wolford*, 189 Mich App at 480. As described in relation to defendant's challenge to the sufficiency of the evidence presented at trial, the evidence presented at the preliminary examination created an inference that was sufficient to create the probable cause necessary to bind defendant over for trial. Defendant was identified as the man who entered the store immediately prior to the attempted robbery occurring. Defendant was discovered in a vehicle that fit the description of the van used in the crime. He acknowledged being at the Capri with an individual who possessed a gun. He was unable to provide the police with consistent accounts of the events in question. It is reasonable to infer that the purpose of defendant's presence at the Capri was not simply to buy an adult video, but was to assist Robinson with the robbery by scouting out the location. Binding defendant over for trial and denying his motion to quash was not outside the range of principled outcomes and, therefore, does not constitute an abuse of discretion.

Affirmed

/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens