STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 14, 2010
v	No. 291985 Ingham Circuit Court
DARIUS JAMES JACKSON, Defendant-Appellant.	LC No. 08-000331-FC

Before: SAWYER, P.J., and FITZGERALD and SAAD, JJ.

PER CURIAM.

A jury convicted defendant of voluntary manslaughter, MCL 750.321, and the trial court sentenced defendant as an habitual offender, second, offense, MCL 769.10, to a prison term of 80 months to 22 year. Defendant appeals as of right. We affirm.

FACTS AND PROCEDURAL HISTORY

Defendant was charged with open murder in the death of Justin Weck. The prosecution's theory was that defendant aided and abetted Maurice Clouse in the killing of Weck. The defense theory was that defendant was merely present at the scene and had no involvement in the killing. Pursuant to a plea agreement, Clouse pleaded guilty to the second degree murder of Weck and agreed to testify in the present case. At the close of proofs, defendant moved for and was granted a directed verdict on the first-degree murder charge. Consequently, the trial court instructed the jury on second degree murder and the lesser offense of voluntary manslaughter, stating that defendant "is charged with intentionally assisting someone else in committing second-degree murder or the less serious offense of voluntary manslaughter." The jury found defendant guilty of voluntary manslaughter.

I

Defendant first argues that the prosecution failed to present sufficient evidence to support his conviction of voluntary manslaughter as an aider or abettor. We disagree.

When reviewing a sufficiency challenge, "evidence is reviewed de novo, in a light most favorable to the prosecution, to determine whether the evidence would justify a rational jury's finding that the defendant was guilty beyond a reasonable doubt." *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005). In determining whether the prosecution has presented

sufficient evidence to sustain a conviction, the issue of credibility is for the jury to decide. *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

In *People v Buck*, 197 Mich App 404, 421-422; 496 NW2d 321 (1992), rev'd in part on other grounds sub nom *People v Holcomb*, 444 Mich 853; 508 NW2d 502 (1993), this Court upheld a defendant's conviction of voluntary manslaughter where there was sufficient evidence to convict of murder, but insufficient evidence to support the voluntary manslaughter conviction. This Court stated:

> The question becomes whether a defendant's conviction of aiding and abetting a lesser offense that is unsupported by the evidence must be reversed where there is sufficient evidence to conclude that the defendant aided and abetted a greater charged offense. We conclude that the conviction for the lesser offense need not be reversed. [*Id*. at 421.]

Additionally, this Court noted in Buck that the defendant "requested the instruction with regard to voluntary manslaughter, thereby inviting a conviction of that offense" 197 Mich App at 423. Here, defendant requested the voluntary manslaughter instruction. Consequently, if the prosecution presented sufficient evidence to support the greater offense of second degree murder, this Court will uphold defendant's conviction for the lesser offense of voluntary manslaughter.

The aiding and abetting statute, MCL 767.39, provides:

> Every 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.

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 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 aid and encouragement. *People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006). A person's mere presence, even with knowledge that an offense is about to be committed or is being committed, is not enough to make a person an aider and abettor. *People v Turner*, 125 Mich App 8, 11; 336 NW2d 217 (1983).

On appeal, defendant argues that Clouse was not credible because he lied to police multiple times, and his testimony was contradicted by other eyewitnesses. However, defendant's argument is without merit, because this Court does not revisit credibility issues on appeal. *Milstead*, 250 Mich App at 404. Viewing the evidence of this case in a light most favorable to the prosecution and deferring to the jury on matters of witness credibility, there was sufficient evidence from which a rational trier of fact could have concluded beyond a reasonable doubt that defendant was guilty of second degree murder as an aider and abettor.

To prove that Clouse committed second degree murder when he shot and killed Weck, the prosecution was required to prove (1) there was a death, (2) caused by an act of Clouse, (3) with malice, and (4) without justification or excuse. *People v Fletcher*, 260 Mich App 531, 559; 679 NW2d 127 (2004). "Malice" is defined as the intent to kill, do great bodily harm, or create high risk of death or great bodily harm with knowledge that such is the probable result and may be inferred from facts and circumstances of killing. *People v Goecke*, 457 Mich 442, 464; 579 NW2d 868 (1998).

Sparrow Hospital emergency room physician Mont R. Roberts testified that Weck died on March 1, 2008. Forensic Pathologist Phillip R. Croft, M.D. opined that the cause of death was a gunshot wound to the chest and that the manner of death was homicide. Clouse testified at defendant's trial and admitted that he caused Weck's death by shooting Weck in the back with a .380-caliber pistol. Malice can be inferred from Clouse's use of a pistol, a deadly weapon. *People v Bulls*, 262 Mich App 618, 627; 687 NW2d 159 (2004). There was no evidence that Clouse committed the killing with justification or excuse. Clouse testified that he shot Weck in the back when Weck was running away in an attempt to escape. Finally, Clouse pleaded guilty to the second-degree murder of Weck. These facts are sufficient to support a finding that Clouse committed second-degree murder when he shot and killed Weck.

Viewed in the light most favorable to the prosecution, a fact finder could have reasonably concluded that defendant assisted and encouraged Clouse to commit second-degree murder. Evidence was presented that defendant drove Clouse to the area where the murder took place and prevented Weck's vehicle from leaving the area by parking diagonally, blocking the street with his truck. Evidence was also presented that after Clouse punched Weck, Weck tried to get back into Olson's car, but defendant blocked him. This assisted Clouse because it forced Weck to turn his back and run down the street where he was then shot. Finally, evidence was presented that defendant provided encouragement to Clouse by accusing Weck of stealing defendant's property and suggesting that someone "[s]hoot that bitch[,]" when Weck was running away.

Viewed in the light most favorable to the prosecution, a reasonable jury could have reasonably inferred that defendant intended the murder to occur. Clouse testified that he and defendant drove around town, trying to figure out who had broken into defendant's home and stolen defendant's property. According to Clouse, he and defendant both had guns. Clouse said that defendant became angry with Weck when they discovered that Weck was wearing the clothes and jewelry that had been stolen from defendant. This evidence demonstrated that defendant had a motive – revenge – in aiding and abetting the murder of Weck. Although proof of a motive is not essential in a prosecution for murder, it is always relevant. *People v Rice* (*On Remand*), 235 Mich App 429, 440; 597 NW2d 843 (1999).

It is equally clear that a reasonable jury could have concluded that defendant had knowledge that Clouse intended to kill Weck. Again, according to Clouse, defendant told him to "[s]hoot that bitch[,]" referring to Weck, when Weck was running away, shortly after defendant discovered that Weck had stolen his property.

In sum, viewing the evidence in a light most favorable to the prosecution, and deferring to the jury on matters of witness credibility, sufficient evidence was presented at trial to support a finding that defendant was guilty of second-degree murder as an aider and abettor. Because the

prosecution presented sufficient evidence to support a conviction of the greater offense of second-degree murder, we affirm defendant's conviction of the lesser offense of voluntary manslaughter. *People v Buck*, 197 Mich App at 422.

II

Defendant asserts that the trial court erred in instructing the jury in response to the jury's question regarding the elements of second-degree murder. However, because defense counsel expressed satisfaction with the trial court's response as given, he has waived any challenge to it. See *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

III

Finally, defendant argues that the trial court erred in scoring Offense Variable (OV) 6 at ten points. We disagree. Defendant preserved this issue by presenting specific challenges to OV 6 at the sentencing hearing. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004).

"A sentencing court has discretion in determining the number of points to be scored [when calculating the sentencing guidelines], provided that evidence of record adequately supports a particular score." *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). Thus, this Court reviews the scoring to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supported a particular score. *People v Steele*, 283 Mich App 472, 490; 769 NW2d 256 (2009).

Under MCL 777.36(1)(c) a score of ten points is appropriate if "The offender had intent to injure or the killing was committed in an extreme emotional state caused by an adequate provocation and before a reasonable amount of time elapsed for the offender to calm or there was gross negligence amounting to an unreasonable disregard for life[.]" MCL 777.36(1)(c). The statute also states that a score of 0 points is appropriate only if "The offender had no intent to kill or injure[.]" MCL 777.36(1)(d). Thus, under this section, ten points is appropriate if defendant intended to injure the victim, acted in the heat of passion, or was grossly negligent. MCL 777.36(1)(c).

Here, defendant clearly had "intent to injure" Weck. MCL 777.36(1)(c). Clouse testified that he and defendant were driving around town, trying to figure out who had broken into defendant's home and stolen defendant's property. Clouse said that defendant became angry with Weck when they discovered that Weck had stolen the property. Clouse said that they were going to beat up Weck, and that defendant told Clouse to "[s]hoot that bitch[,]" referring to Weck. This evidence adequately supports a determination that defendant had the necessary "intent to injure" Weck, as required to support a score of ten points under MCL 777.36(1)(c).

Although the sentencing court scored the ten points based on MCL 777.36(2)(b) and not MCL 777.36(1)(c), it clearly reached the correct result when it scored ten points for OV 6. A sentencing court's decision that reaches the correct legal result for the wrong reason will not be reversed on appeal. *In re People v Jory*, 443 Mich 403, 425; 505 NW2d 228 (1993). Because

the sentencing court reached the correct result, we affirm defendant's score of ten points for OV 6.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Henry William Saad