STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 23, 2010
v	No. 292613 Wayne Circuit Court
JAMEL DONTE DAVIS, Defendant-Appellant.	LC No. 08-016447-FC

Before: STEPHENS, P.J., AND MARKEY AND WILDER, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of carjacking, MCL 750.529a. Defendant was sentenced to 81 to 122 months' imprisonment. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that insufficient evidence existed to support his conviction under an aiding and abetting theory because the prosecution failed to prove beyond a reasonable doubt that (1) defendant intended to aid and abet the carjacking or knew that the principle intended to commit the carjacking or (2) the carjacking was a natural and probable consequence of the assault and battery that defendant intended to aid and abet. We disagree.

We review the record de novo in a claim alleging insufficient evidence. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). We must determine whether the evidence presented at trial, when viewed in the light most favorable to the prosecution, would be sufficient to justify a rational trier of fact in finding the defendant guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

The constitutional right to due process prohibits criminal convictions absent proof of each and every element of the crime charged beyond a reasonable doubt. *Jackson v Virginia*, 443 US 307, 316; 99 S Ct 2781; 61 L Ed 2d 560 (1979). Reasonable inferences arising from circumstantial evidence, however, can provide sufficient proof for conviction. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

"In order to sustain a carjacking conviction, the prosecution must prove (1) that the defendant took a motor vehicle from another person, (2) that the defendant did so in the presence of that person, a passenger, or any other person in lawful possession of the motor vehicle, and (3) that the defendant did so either by force or violence, by threat of force or violence, or by putting

the other person in fear." *People v Davis*, 250 Mich App 589, 592; 649 NW2d 118 (2002), aff'd in part and rev'd in part 468 Mich 77 (2003). To convict under an aiding and abetting theory, the prosecution must also establish the following: "(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." *Carines*, 460 Mich at 768, quoting *People v Turner*, 213 Mich App 558, 568-569; 540 NW2d 728 (1995), overruled in part on other grounds by *People v Mass*, 464 Mich 615, 628 NW2d 540 (2001).

Here, defendant does not dispute that a carjacking occurred at the gas station. Rather, defendant's argument on appeal is that the prosecution failed to establish the third element required under an aiding and abetting theory. As the Michigan Supreme Court outlined in *People v Robinson*, 475 Mich 1, 15; 715 NW2d 44 (2006), to establish this final element, "the prosecutor must prove beyond a reasonable doubt that . . . the defendant intended to aid the charged offense, knew the principal intended to commit the charged offense, or, alternatively, that the charged offense was a natural and probable consequence of the commission of the intended offense." These methods of proof are referred to respectively as the "intended offenses" and "natural and probable consequences" theories. *Id*. at 9-16.

Under the "intended offenses" theory, intent may be inferred from the facts and circumstances, including a close association between the defendant and the principal, the defendant's participation in planning or executing the crime, and the defendant's immediate flight after the crime's commission. *Carines*, 460 Mich at 757-758. Here, the victim of the carjacking identified defendant as the person who said to take the vehicle. Although the victim's testimony was inconsistent regarding who made the statement, in the case of conflicting testimony, "the question of credibility ordinarily should be left for the factfinder." *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998). Further, viewing the facts in the light most favorable to the prosecution, this Court must take as true the victim's final position on the matter, in which he indicated that defendant was at least one of the men who said to take the vehicle and that he simply forgot to mention defendant's name in his statement to the police.

This is sufficient evidence that defendant intended to aid and abet the carjacking or knew that the principle intended the commission of the crime. Viewing the evidence in the light most favorable to the prosecution, other circumstances supporting this conclusion include the following: (1) the three men arrived together; (2) defendant helped pull the victim out of his vehicle to fight him; and (3) defendant fled the scene immediately after the incident. It is also notable that defendant fled without the individual who he arrived with, the principal, who drove off in the victim's vehicle.

Under the alternative "natural and probable consequences" theory, an aider and abettor may only be held liable for crimes that are fairly within the common enterprise such that one might anticipate their commission should the opportunity arise. *Robinson*, 475 Mich at 9. In particular, defendant cites to *People v Foley*, 59 Mich 553; 26 NW 699 (1886), as standing for the proposition that one who intends to engage in a fight, as here, should not be liable if his accomplice decides to carjack a vehicle during that fight. In *Foley*, however, the Michigan Supreme Court found that a person who engages in a fight *can* be liable as an accomplice to a

theft crime—in *Foley*, a robbery—so long as the theft crime was part of a common purpose. *Id.* at 556.

Here, a rational trier of fact could reasonably conclude that it was within the three men's common purpose to carjack the victim's vehicle, for the same reasons mentioned above. The men arrived together; some evidence suggests that defendant assisted in removing the victim from the vehicle, which provided opportunity for its theft; the fight itself facilitated the carjacking, leaving the vehicle vacant for the principal to occupy and drive off in; and, one of the men, possibly defendant, directed the principal to commit the carjacking.

Defendant also argues that a conviction under the natural and probable consequences theory is improper because no foreseeable connection exists between assault and carjacking, as compared to, for example, assault and homicide. Nonetheless, although a sufficient connection between assault and carjacking to support a conviction under an aiding and abetting theory may not be typical, the possibility is certainly not foreclosed, so long as a common purpose is shown.

Finally, defendant cites to *Brown v Palmer*, 441 F3d 347 (CA 6, 2006), which also involved a carjacking conviction under an aiding and abetting theory, to suggest that the prosecution's evidence was insufficient. Unlike here, however, the prosecution in *Brown* offered no evidence that the defendant had ever met the perpetrator before or that the defendant knew that the perpetrator intended to carjack the vehicle. *Id*. at 352. More importantly, this Court is not bound by the holdings or reasoning of federal circuit court decisions. *Abela v GMC*, 469 Mich 603, 606-607; 677 NW2d 325 (2004).

Viewed in the light most favorable to the prosecution, sufficient evidence existed to support defendant's conviction of carjacking as an aider and abettor under either the "intended offenses" or "natural and probable consequences" theory.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Jane E. Markey
/s/ Kurtis T. Wilder